



A LANDSCAPE ANALYSIS OF DOMESTIC WORKERS' RIGHTS AND ILO CONVENTION 189

Published by the Thomson Reuters Foundation for the Trust Women Conference

NOVEMBER 2012

WHITE & CASE

GRASTY QUINTANA MAJLIS & CIA.
) ABOGADOS (

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WHITE & CASE

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) ABOGADOS (

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This Report and the information it contains is provided for general informational purposes only. Although we hope the Report will be helpful as background material, we cannot warrant that it is accurate or complete, particularly as laws, regulations or circumstances change after publication. Moreover, the Report is general in nature and may not apply to particular factual or legal circumstances. It is not intended to constitute, and should not be relied or acted upon as, legal advice. It does not create an attorney-client relationship. Any reader seeking to act upon any of the information contained in this Guide is urged to seek individual advice from legal counsel qualified in the relevant jurisdiction in relation to his or her specific circumstances. None of White & Case, Makarim & Taira S., Thomson Reuters Foundation or Grasty Quintana Majlis & Cia is responsible for inaccuracies in the text.

TABLE OF CONTENTS

FOREWORD	1
INTRODUCTION	3
EXECUTIVE SUMMARY	7
CASE STUDIES	11
ENGLAND	11
FRANCE	38
ITALY	60
TURKEY.....	75
SINGAPORE.....	94
INDONESIA.....	111
SOUTH AFRICA	132
CHILE	174

FOREWORD

The Thomson Reuters Foundation is proud to present this report which is one of a series of TrustLaw publications that provide a legal framework can be used to improve laws and policies that affect women. On this occasion TrustLaw partnered with White & Case to produce a comparative analysis of the laws that govern domestic workers' rights in England, France, Italy, Turkey, Singapore, Indonesia, South Africa and Chile. We would like to thank White & Case and their team of lawyers from around the world for committing their time and expertise to this project and making this report possible.

The Thomson Reuters Foundation launched TrustLaw in July 2010. Our goal: to spread the practice of pro bono worldwide and empower people with trusted information. At the centre of TrustLaw is **TrustLaw Connect**¹, a global pro bono service connecting NGOs and social enterprises with lawyers willing to provide free legal assistance.

Women's rights are a major priority for the Foundation. We work in this field through TrustLaw Connect and through our news coverage. We have 25 journalists at the Foundation writing about a range of issues including forced labour and trafficking, sexual violence and child marriage. In addition, through our annual women's rights conference **Trust Women**², we bring the world's most innovative leaders in women's rights together with the best minds in law, finance, technology, media, government and philanthropy, to help spark new collaborations and solutions.

We hope that this report will be a useful tool for legislators, policymakers and civil society to analyse the current rights afforded to domestic workers and the laws that will need to change in order to strengthen those rights.

A handwritten signature in black ink, reading "M. Villa", with a horizontal line underneath.

MONIQUE VILLA

CEO, Thomson Reuters Foundation

¹ <http://www.trust.org/trustlaw/connect/>

² <http://www.trustwomenconf.com/>

INTRODUCTION

The International Labour Organisation estimates that up to 100 million people work in domestic households and that 83% of these are women or girls and many are migrant workers. Millions work under appalling conditions with limited freedom and no legal rights or protection. Last year, the International Labour Organisation adopted Convention 189 titled “Decent Work for Domestic Workers” (**the Convention**) which requires countries to take steps to improve working conditions for domestic workers. One year after its adoption, the Convention has only been ratified by three countries (Uruguay, Philippines and Mauritius) and it is crucial that more countries ratify the Convention and strengthen the legal protections for domestic workers. This Report examines existing laws that protect domestic workers in a number of countries and aims to identify where new laws will be required in order to provide domestic workers with the rights and protections embodied in the Convention.

In essence, the Convention provides that people who work in domestic households must have the same basic labour rights as other workers. These rights include:

- Reasonable working hours;
- Weekly rest of at least 24 consecutive hours;
- Limits on in-kind payment;

- Clear information on terms and conditions of employment; and
- Respect for fundamental principles and rights at work, including freedom of association and the right to collective bargaining.

The Report examines the legal frameworks that govern the rights of domestic workers in England, France, Italy, Turkey, Singapore, Indonesia, South Africa and Chile (the **Case Study Countries**). Each chapter identifies existing laws that will protect domestic workers' rights in the relevant Case Study Country and identifies where new laws will need to be introduced in order to comply with the Convention. The aim of this Report is to encourage more countries to ratify the Convention and actively consider next steps for its implementation.

As such, for each Case Study Country the Report sets out:

1. **ILO Convention Provision:** the text of each of the relevant Articles of the Convention;
2. **Corresponding National Laws and Regulations:** existing laws in that country that embody the rights set out in that Article of the Convention;
3. **Laws or Regulations covering other workers but not domestic workers:** laws that provide the rights set out in the relevant Article of the Convention to other workers but that do not apply to domestic workers; and

4. **Notes/Recommendations/Analysis:** comments on gaps in legislation and whether amendments or new legislation would be required in order to give domestic workers the rights set out in that Article of the Convention.

EXECUTIVE SUMMARY

Within the scope of the TrustLaw project, White & Case offices and local counsel in England, France, Italy, Turkey, Indonesia, Singapore and South Africa, together with lawyers at Grasty Quintana Majlis & Cia (who prepared the chapter on Chile), identified and reviewed existing national laws and regulations in order to assess compliance with ILO Convention 189: Decent Work for Domestic Workers (the **Convention**). National legislation reviewed for the Case Study Countries includes Constitutions in addition to laws and regulations governing labour, employment, immigration and social security issues, to the extent relevant to domestic labour and trafficking.

An overall analysis of this research project primarily finds that:

RATIFICATION STATUS – The Convention has not been ratified by any of the Case Study Countries.

DOMESTIC WORKER SPECIFIC LEGISLATION – Most of the Case Study Countries do not have specific legislation exclusively covering domestic workers (with the exception of Italy, where a Domestic Labour Law has been enacted and Chile where there are some provisions in the Labour Code that apply exclusively to domestic workers); however, general labour and employment laws and regulations provide some form of coverage for domestic workers.

DEFINITION OF DOMESTIC WORKER – The definition of “domestic worker” varies under the existing legislation of each Case Study Country, with some providing a narrower and others a broader definition than the one formulated by the Convention. For instance, Turkish legislation does not provide a clear definition of “domestic work” or “domestic worker” and definitions set forth in High Court precedents are the only reliable guidelines. Meanwhile, in Singapore, different acts and regulations provide four definitions of “domestic worker” and the definition of “domestic work” provided under French legislation is broad enough to include work such as babysitting, assisting the elderly and cleaning, including on a part-time basis. While “domestic work” is not defined under South African legislation, the definition provided for “domestic workers” is broad enough to be considered in line with the Convention.

MIGRANT WORKERS — The standing of migrant domestic workers is a grey area in most of the Case Study Countries; except notably for Singapore, where specific regulations govern workers from certain neighbouring countries, and Indonesia, where employment of migrant domestic workers is clearly prohibited. In Chile, France, Italy, Turkey and South Africa, migrant domestic workers with residence and work permits are theoretically governed by the same rules as national domestic workers; however, the application of such rules to migrant domestic workers has proven to be ambiguous in practice.

TRADE UNIONS — Organisation of domestic workers under trade unions is permissible under the regulations of Chile, Italy, Indonesia, Turkey and France while such organisation may pose more of a challenge in Singapore and England. Under English regulations the freedom to organise and take industrial action is subject to various limitations and the form of any such action must be carefully considered in order that any participating workers avoid liability. Although the rights conferred on trade union representatives in South Africa are limited, domestic workers benefit from the right to collective bargaining and to join organisations of their choosing.

SOCIAL SECURITY — Social security coverage of domestic workers in the Case Study Countries is broadly in line with the Convention. Turkey and Indonesia cover domestic workers under general social-security-related legislation while Singapore explicitly excludes domestic workers from the scope of its legislation. In Italy, there is a complementary social security fund for domestic workers in addition to general social security coverage. Similarly, in France, domestic workers benefit from medical insurance in addition to general social security coverage, which is in some respects more advantageous than the coverage generally provided to workers.

Among the Case Study Countries, the laws and regulations of Chile, Italy and France stand out for their high level of compliance with the Convention, where national rules are more advantageous for domestic workers than the Convention in certain cases. Singapore's national laws and regulations are significant for their coverage of migrant domestic workers, while national domestic workers are less clearly regulated. In Turkey, domestic workers are explicitly excluded from the scope of the national labour law, while the protections afforded generally by the code of obligations have proven to be ambiguous and difficult to implement in practice.

Overall, the need for further compliance by the Case Study Countries with the Convention was identified with respect to general employment-related issues such as minimum wage, minimum age, protection against violence and harassment, health and safety, the terms and conditions of employment, access to dispute resolution mechanisms, employment agencies and inspection; however, each Case Study Country has particular shortfalls in its regime, as detailed in the relevant templates.

Amendments to existing national laws and regulations to achieve compliance with ILO Convention 189 require the Parliament's, House of Representatives' and/or President's approval in most of the Case Study Countries. In Italy and Turkey, public pressure on the relevant governmental authorities for ratification of the Convention has been initiated. In most of the Case Study Countries, the implementation of national legislation, regardless of whether compliant with the Convention, and monitoring of domestic workers have been identified as important issues due to the nature of domestic work and potential vulnerability of domestic workers.

CASE STUDIES

ENGLAND

Article 1 ILO Convention Provision

DEFINITIONS

For the purpose of the Convention:

- (a) The term “domestic work” means work performed in or for a household or households;
- (b) The term “domestic worker” means any person engaged in domestic work within an employment relationship;
- (c) A person who performs domestic work only occasionally or sporadically and not on an occupational basis is not a domestic worker.

Corresponding National Law or Regulation

There is no statutory definition of “domestic worker”.

Individuals providing personal services are broadly classified into three categories: employees, workers and self-employed or independent contractors.

“Domestic workers”, as defined under the Convention, are likely to be classified as employees or workers.

CLASSIFICATION AS EMPLOYEE

Under section 230(1) of the Employment Rights Act 1996 (“**ERA 1996**”) an employee is defined as “an individual who has entered into or works under (or, where the employment has ceased, worked under) a contract of employment”. Under section 230(2) of ERA 1996, a contract of employment means “a contract of service or apprenticeship, whether express or implied, and (if it is express) whether oral or in writing”.

The application of this definition to particular circumstances is often decided using common law employment tests on a case to case basis.

CLASSIFICATION AS WORKER

A worker is defined under section 230(3) of ERA 1996 as an individual who has entered into or works under (or, where the employment has ceased, worked under):

- A contract of employment; or
- Any other contract, whether express or implied and (if it is express) whether oral or in writing, whereby the individual undertakes to do or perform personally any work or services for another party to the contract whose status is not by virtue of the contract that of a client or customer of any profession or business undertaking carried on by the individual.

Whilst workers have less extensive employment protection rights than employees, statutory employment rights often cover workers as well as employees.

Law or Regulation covering other workers but not domestic workers

Not applicable.

Notes/Recommendations/Analysis

To be considered whether domestic workers should be expressly included in certain legislation.

Domestic workers working in diplomatic households to be included in legislation and afforded similar rights.

Article 3 ILO Convention Provision**FREEDOM OF ASSOCIATION AND RIGHT TO COLLECTIVE BARGAINING**

1. Each member shall take measures to ensure the effective promotion and protection of the human rights of all domestic workers, as set out in this Convention.
2. Promote and realize the fundamental principles and rights at work such as collective bargaining, elimination of all forms of forced or compulsory labour, and abolition of child labour.
3. Protect the right of domestic workers and employers of domestic workers to join organizations, federations and confederations of their own choosing.

Corresponding National Law or Regulation

1. Domestic workers are not considered a specific sub-group by English legislation for the purposes of human rights protection via the Human Rights Act 1998 ("**HRA**"). However, the rights of

domestic workers may be overlooked in areas of employment legislation so that domestic workers are not offered equal protection e.g. to privacy and a family life.

However, the Anti-Slavery Day Act 2010 sets an annual day for the promotion of the rights of those in slavery and to raise awareness of the issues.

The definition of slavery covers domestic servitude which is a category some domestic workers may feel their work falls into.

2. & 3. COLLECTIVE BARGAINING / UNION MEMBERSHIP There is no right to strike in the UK. Please see below D for further discussion of this point.

FORCED LABOUR Forced labour is prohibited by Article 4 of the European Convention on Human Rights ("**EC**HR") as incorporated into English law by the HRA.

CHILD LABOUR

s.18 of the Children and Young Persons Act 1933 sets out restrictions on the employment of children. Children cannot be employed whilst they are in full time education. In the UK this means they cannot be employed until July following the school year that they turn 16.

However local authorities are able to create by laws to allow children under 16 to work in limited circumstances. Employers who want to employ children or young people under school leaving age are required to get a permit from their local authority. The permit must be signed by both the employer and the child's parents. By laws are often passed to allow 14-16 year olds to do light work e.g. a paper round or in stables. Children under 14 are not allowed to work at all except in certain limited circumstances not including domestic work.

Law or Regulation covering other workers but not domestic workers

Not applicable.

Notes/Recommendations/Analysis

COLLECTIVE BARGAINING / UNION MEMBERSHIP

The freedom to organise and take industrial action is subject to various limitations and the form of any such action must be carefully considered in order that any participating workers avoid liability. Striking is likely to constitute a breach of contract, however an employer will not be able to sue a trade union and (to a certain extent) to dismiss the striking employees, provided certain strict conditions are fulfilled. The phrase "lawful strike" or "lawful industrial action" is often used to describe industrial action that has been organised in

accordance with these conditions, and which therefore affords the union and employees these immunities.

The UK is a signatory to various international instruments protecting the rights of employees to join trade unions and participate in industrial action, such as the ECHR and the EU Charter of Fundamental Rights. It is argued that these instruments guarantee a right to strike and that UK law does not comply with them. However, these arguments have had little practical impact on the law in the UK and it is unlikely that the right to strike will be protected anytime soon.

Although the law does not discriminate against domestic workers it may be harder for domestic workers to meet the requirements of a lawful strike action pursuant to which striking workers are offered some protection. There are few organisations at present which represent domestic workers. Among them are “Justice for Domestic Workers” (J4DW) (which is closely linked to Unite) and Kalayaan however these are not recognised trade unions. As such there would be no legal protection for striking domestic workers.

Children under 14 are allowed to be employed to do odd jobs for parents, friends or neighbours. There must be care that this exception to child employment is not abused in a domestic work setting.

Article 4 ILO Convention Provision

CHILD LABOUR

1. Minimum age of domestic worker is:
 - a. consistent with the provisions of the Minimum Age Convention, 1973 and Worst Forms of Child Labour Convention (1999);
 - b. age of domestic worker should not be lower than that established by national laws and regulations for workers generally.
2. Domestic workers who are under the age of 18 and above the minimum age of employment are not deprived of compulsory schooling, further education or vocational training.

Corresponding National Law or Regulation

EDUCATION ACT 1996

1. Children can work full-time in the UK when they reach the Mandatory School Leaving Age (“**MSLA**”), that is, after the last Friday in June in the academic year of the child’s 16th birthday.

Until children reach the MSLA, they can only work a certain number of hours per week and only perform certain types of work (as mentioned previously, domestic service is not one of these types of work). Therefore British domestic workers are not deprived of compulsory schooling.

2. This is consistent with Art 2(3) of the Minimum Age Convention 1973 of the International Labour Organization. An overseas domestic worker migrating into the UK must be between the ages of 18-65 to apply for domestic worker status (the UKBA Immigration Rules 159A (i)); therefore an immigrating domestic worker would be beyond the age at which UK compulsory schooling is available.

Law or Regulation covering other workers but not domestic workers

Not applicable.

Notes/Recommendations/Analysis

English legislation is consistent with Article 4.

Article 5 ILO Convention Provision

PROTECTION FROM ABUSE, HARASSMENT AND VIOLENCE

Enjoy effective protection against all forms of abuse, harassment and violence.

Corresponding National Law or Regulation

1. *Harassment*

EQUALITY ACT 2010

S.26(1) Right not to be harassed by unwanted conduct related to age, disability, gender reassignment, race, religion, belief, sex or sexual orientation.

S.26(2) Right not to be sexually harassed.

S.26(3) Right not to be treated less favourably for rejecting or submitting to sexual harassment or harassment related to gender reassignment or sex.

(The Equality Act 2010 covers employees, workers and some individuals who are technically self-employed.)

2. *Abuse and Violence*

There is no legislation protecting domestic workers specifically against violence and abuse, but UK law provides broad protections to all people and does not exclude domestic workers.

3. *Domestic Workers in Diplomatic Households*

VIENNA CONVENTION ON DIPLOMATIC RELATIONS 1961

The Vienna Convention on Diplomatic Relations 1961 (“**VCDR**”) requires that signatory states facilitate the entry of diplomats’ private domestic staff.

Under Article 41(1) of the VCDR, it is the duty of all diplomats “to respect the laws and regulations of the receiving state”.

Law or Regulation covering other workers but not domestic workers

Not applicable.

Notes/Recommendations/Analysis

There is legal protection for all workers in the UK aimed at providing relief from “all forms of abuse, harassment and violence.” However, there has been criticism in the press of the change which the UK has adopted which ties the visa of a domestic worker with one employer, possibly making it more difficult for a domestic worker to flee from violence due to an overriding fear of deportation.

However, The Home Office refutes such criticism strongly. In a Home Office Paper on the perceived impact of the changes to the Immigration Rules, it was suggested that the visa changes would have little impact on the abuse of workers:

“...evidence shows that many overseas domestic workers change employer for other reasons and we do not consider that an ability to change employer is the only way to provide protection.”

Article 6 ILO Convention Provision

RIGHT TO PRIVACY

Fair terms of employment as well as decent working conditions and, if they reside in the household, decent living conditions that respect their privacy.

Corresponding National Law or Regulation

Currently there is no stand-alone cause of action for breach of privacy in UK law.

HUMAN RIGHTS ACT 1998

Under the HRA, UK courts and tribunals are obliged to act in a way that is

compatible with Articles 8 and 10 of the ECHR when carrying out their functions (Section 6 (1) of HRA).

Article 8 of the ECHR provides that everyone has the right to respect for his private and family life, his home and his correspondence. Therefore analysis of privacy law in UK involves a detailed examination of the case law. Case law suggests that where privacy actions have succeeded, this has been on the basis of certain grounds: unjustified disclosure of private information, traditional breach of duty of confidence and preventing intrusion or harassment. This last ground has only begun to be relied upon in UK privacy cases relatively recently and none have been taken further than the High Court.

Tugendhat J in *Goodwin v NGN Ltd and VBN* said that the right to privacy regarding preventing intrusion or harassment had two components:

- The right to prevent unwanted access to private information (the confidentiality component); and
- The right to prevent unwanted intrusion or harassment (the intrusion component).

It appears that there is now a separate ground on which to show a reasonable expectation of privacy since the judge analysed separately whether the applicant had a reasonable expectation of privacy based either on the confidentiality component or the intrusion component. Also, the level of intrusion which the court could prohibit under the HRA did not necessarily have to amount to harassment within the meaning of the Protection from Harassment Act 1997.

Law or Regulation covering other workers but not domestic workers

There are also many provisions where 'workers' are not afforded the same statutory terms of employment as an 'employee', such as:

- statutory sick pay;
- redundancy payments;
- statutory maternity pay;
- right as a fixed term employee not to be treated less favourably than a comparable full-time worker;
- right not to be unfairly dismissed;
- right to receive a written statement of reasons for dismissal.

WORKING TIME REGULATIONS 1998

Pursuant to Regulation 19 of Working Time Regulations 1998, in relation to a worker employed as a domestic servant in a private household, certain statutory provisions relating to:

1. a worker's maximum weekly working time;

2. the maximum weekly working time for young workers;
3. the length of night work;
4. the restriction on night work by young workers;
5. the transfer of night workers to day work, and health assessments; and
6. the pattern of work,

do not apply.

EMPLOYMENT RIGHTS ACT 1996

Pursuant to s. 161 of the Employment Rights Act 1996, a person does not have any right to a redundancy payment in respect of employment as a domestic servant in a private household, where the employer is the parent or step-parent, grandparent, child or stepchild, grandchild or brother or sister, or half-brother or half-sister, of the employee.

Apart from this restriction, the statutory provisions relating to redundancy payments apply to an employee who is employed as a domestic servant in a private household as if the household were a business and the maintenance of the household were the carrying on of that business by the employer.

Notes/Recommendations/Analysis

Although there are measures to ensure the employer signs terms and conditions to secure the domestic worker's conditions of 'Maintenance and Accommodation', it is clear that in many instances, domestic workers are not afforded the same terms of employment as employees or workers generally.

A grievance of some domestic workers is that they are expected to be on standby and available to work 24 hours a day without additional payment outside of their working hours. Additionally domestic workers' rights to national minimum wage and proper rest breaks may not be respected by their employers. In order to prevent such exploitation, we recommend that the rate should be regulated at which standby or on-call hours are remunerated.

Also, since migrant domestic workers in the UK often live and work in the same household, they face the prospect of becoming homeless if they decide to flee from an abusive employer. As a result, many may feel they have no option but to remain in a situation where they are being mistreated. If they do flee, their lack of recourse to public funds would mean that safe housing is not available to them. We recommend that state-funded short-term refuge places should be available for migrant domestic workers escaping from situations of abuse, exploitation, forced labour and trafficking.

Article 7 ILO Convention Provision

TERMS AND CONDITIONS IN EMPLOYMENT CONTRACT

Domestic workers are informed of their terms and conditions of employment in an appropriate, verifiable and easily understandable manner and preferably, where possible, through written contracts.

Corresponding National Law or Regulation

Where a domestic worker is treated as an employee, the following will apply.

EMPLOYMENT RIGHTS ACT 1996

Part 1 of the Employment Rights Act 1996 deals with 'Employment Particulars' and Section 1 'Statement of initial employment particulars' is the most relevant to Article 7.

Section 1(1) states that where an employee begins employment with an employer, the employer shall give to the employee **a written statement of particulars of employment**. The particulars required are listed in section 1(3) and are as follows: (i) names of the employer and employee, (ii) date of which the employment began, (iii) date on which the employee's continuous employment began.

Further, pursuant to section 1 (4) the statement shall also contain particulars (either in the statement or no more than seven days before the statement (or the instalment containing them) is given) including (but not limited to): (i) terms and conditions relating to hours of work and holiday, (ii) scale of remuneration and intervals of payment, (iii) length of the notice period, (iv) place of work and (v) job title.

Law or Regulation covering other workers but not domestic workers

Please note that whilst all employees are required to be given this information, the position is different for workers. Workers are not addressed under s.1 of the Act which is only for 'employees'. Workers are defined under s.230(3) as "an individual who has entered into or works under (i) a contract of employment or (ii) any other contract, whether express or implied whereby the individual undertakes to do or perform personally any work or services for another party to the contract whose status is not by virtue of the contract that of a client or customer of any profession or business undertaking carried on by the individual".

Meanwhile s.320(1) defines an employee as "an individual who has entered into or works under (or, where the employment has ceased, worked under) a contract

of employment". Under s.320(2) "contract of employment" means a contract of service or apprenticeship, whether express or implied, and (if it is express) whether oral or in writing".

Therefore the argument appears to centre on whether the domestic worker would fall under the definition of an 'employee'. In many cases, low paid, vulnerable workers, especially agency workers have been held to fall outside the scope of those rights in the Act which are only for "employees". This is because some judges have taken the view that there was not sufficient "control" or "mutuality of obligation" to establish a contract of employment. What those judges have meant by "mutuality of obligation" is that the terms of the contract, especially an obligation to work or not work at any given time and the promise of work in future, were not reciprocal enough.

Notes/Recommendations/Analysis

There is considerable debate about where the scope of employment rights really lies and how these might affect domestic workers. Generally speaking, pursuant to s.1, if a worker is provided with a written contract of employment (preferably displaying mutuality) then they are likely to be treated as an employee and will be subject to the protection of s.1.

Article 8 ILO Convention Provision

MIGRANT DOMESTIC WORKERS

1. National laws and regulations shall require migrant domestic workers who are recruited in one country for domestic work in another receive a written job offer or contract of employment that is enforceable in the country in which the work is to be performed.
2. Laws, regulations, or other measures shall specify the conditions under which migrant domestic workers are entitled to repatriation.

Corresponding National Law or Regulation

UKBA IMMIGRATION RULES

1. UKBA Immigration Rule s159A states that, in order for a domestic worker in a private household to be allowed leave to enter the UK, the worker must, amongst other things, have agreed in writing terms and conditions of employment in the UK with the employer, as specified in guidance published by the UK Border Agency, including specifically that the applicant will be paid in accordance with the National Minimum Wage Act 1998 and any Regulations made under it.

2. There are certain measures which may entitle domestic workers to repatriation.

The UK operates the “Voluntary Assisted Return and Reintegration Programme” for asylum seekers which provides financial assistance. A domestic worker must establish that s/he does not fall within one of the exceptions to assistance (e.g. if s/he has permission to enter or remain in the UK for non-asylum reasons).

The UK also operates the Assisted Voluntary Return of Irregular Migrants programme for those who are in the United Kingdom illegally and wish to return to their home country.

Law or Regulation covering other workers but not domestic workers

Not applicable.

Notes/Recommendations/Analysis

Not applicable.

Article 9 ILO Convention Provision

RESIDENCY AND ENTITLEMENTS

1. Free to reach agreement with employer or potential employer on whether to reside in the household.
2. Domestic workers residing in the household are not obliged to remain in the household or with household members during periods of daily and weekly rest or annual leave.
3. Entitled to keep in their possession their travel and identity documents.

Corresponding National Law or Regulation

Not applicable.

Law or Regulation covering other workers but not domestic workers

Not applicable.

Notes/Recommendations/Analysis

There is no legislation that specifically addresses these issues. However, an inability to leave the household could amount to an unlawful detention in contravention of Article 5(1) of the ECHR.

Article 10 ILO Convention Provision

WORKING TIME

1. Equal treatment between domestic workers and workers in relation to normal hours of work, overtime compensation, periods of daily and weekly rest and paid annual leave.
2. Weekly rest shall be at least 24 consecutive hours.
3. Periods when domestic workers are not free to dispose of their time and remain at the disposal of the employer are regarded as part of the hours of work.

Corresponding National Law or Regulation

Where a domestic worker is treated as an employee, the following will apply.

EMPLOYMENT RIGHTS ACT 1996

1. The Employment Rights Act 1996 sets out general conditions and requirements for employment.

THE WORKING TIME REGULATIONS 1998

2. The Working Time Regulations 1998 (SI 1998/1833) ("**WTR 1998**"), require employers to take all reasonable steps in keeping with the need to protect workers' health and safety to ensure that each worker's average working time (including overtime) does not exceed 48 hours per week (regulation 4(1) and (2)).

Regulations 4(1) and (2), 6(1), (2) and (7), 7(1), (2) and (6) and 8 of the WTR 1998 do not apply in relation to a worker employed as a domestic servant in a private household.

For example:

4.(1) Subject to regulation 5, a worker's working time, including overtime, in any reference period which is applicable in his case shall not exceed an average of 48 hours for each seven days.

6.(1) A night worker's normal hours of work in any reference period which is applicable in his case shall not exceed an average of eight hours for each 24 hours.

Time spent on call has been the subject of debate especially where workers are asked to be on call in their home, as may be the case for domestic workers. Recent case law has favoured the approach that even where the worker is in their home, if they are on call and not free to leave the house or pursue their own activities then this time counts as working time (*Davies v London Borough of Harrow ET/3301124/02*).

In *MacCartney v Oversley House Management* UKEAT/0500/05, the court stated that the precise nature of the accommodation supplied to workers when they were on call (that is, whether or not it was their “home”) was not significant: the relevant question was whether they were required to be present and remain available at a place determined by the employer. *MacCartney* was followed by the Employment Appeal Tribunal (“**EAT**”) in *Hughes v G and L Jones t/a Graylyns Residential Home* UKEAT/0159/08. Mrs Hughes was a part-time care assistant paid for an eight-hour week. In addition to these hours, she was on call between 9pm and 8am, seven days a week. She occupied a flat on site at reduced rent in order that she might be available when called upon. The EAT held that her working time was 85 hours a week (eight hours of actual work and 77 hours on call).

Law or Regulation covering other workers but not domestic workers

We note that where domestic workers are not considered to be employees they would fall outside the WTR 1998 and other protection offered to employees.

Notes/Recommendations/Analysis

Where a domestic worker is treated as an employee, UK case law as it stands is favourable to domestic workers. It holds that time where workers are required to be in the house and unable to pursue their own activities is counted in their hours of work in compliance with Article 10. The EAT is bound by the doctrine of precedent and must therefore follow judgments of the Court of Appeal and Supreme Court (formerly the House of Lords). It is not bound by decisions of the High Court. The EAT will usually follow another division of the EAT unless there are exceptional circumstances or previous inconsistent decisions.

Currently the “European Working Time Directive”, being Directive 2003/88/EC (the “**EWTD**”) and the WTR 1998 only distinguish between working time and rest time and do not cover periods of time when workers are not working but are not free to pursue their own activities – which may be required of domestic workers. In June 2008, EU ministers proposed that the EWTD should be revised so that on-call time should be split into active and inactive on-call time, with active on-call time necessarily counting as working time. Negotiations resumed in November 2011 with a view to reaching agreement on amendments to the EWTD by September 2012.

The outcome should be monitored to ensure that domestic workers’ rights are not prejudiced. In particular, that inactive on-call time does not come to be considered outside working hours so that this time is taken out of the limits set by the working time directive.

Article 11 ILO Convention Provision

WAGE

Domestic workers enjoy minimum wage coverage where such coverage exists and without discrimination based on sex.

Corresponding National Law or Regulation

NATIONAL MINIMUM WAGE ACT 1998 AND THE NATIONAL MINIMUM WAGE

REGULATIONS 1999 The National Minimum Wage Act 1998 ("**NMWA 1998**") and the National Minimum Wage Regulations 1999 (SI 1999/584) (the "**NMW Regulations**") give workers the right to a specified minimum hourly rate of pay, which is regularly updated. The employer is under the obligation to pay the National Minimum Wage ("**NMW**"), and there are no exclusions for smaller employers. However, this does not necessarily apply to domestic workers (see below).

THE EQUALITY ACT 2010 The Equality Act 2010 provides that men and women should receive equal pay for equal work, as set out in Article 157 of the Treaty on the Functioning of the European Union.

Law or Regulation covering other workers but not domestic workers

Please note that those who live in their employer's family home, are treated as a member of the family and are not charged for food or accommodation are not entitled to the NMW.

For this exemption to apply, the worker must be treated as part of the family in respect of the provision of accommodation and meals and the sharing of tasks and leisure activities (regulation 2(2)(a), NMW Regulations).

Guidance on the regulation 2(2)(a) exemption was provided in *Julio v Jose UKEAT/0553/10 and other cases*; [2012] IRLR 180 (EAT). For the exemption to apply, a domestic worker must genuinely be treated as a member of the employer's family unit. Whether or not they are so treated must be considered holistically. Although regulation 2(2)(a) provides that "particular regard" must be had to the employer's provision of accommodation and meals, and the sharing of tasks and leisure activities between the worker and the employer's family, this does not mean that regard should not be had to other material matters such as the dignity with which the worker is treated, the degree of privacy and autonomy they are afforded, and the extent to which (if at all) they are exploited.

Notes/Recommendations/Analysis

NB If the domestic worker is a member of the employer's family and lives in their home they will not qualify for the NMW if:

- they help run the family business, or
- they work in their employer's household and share in the tasks and activities of the family.

EMPLOYMENT REGULATIONS 1999

Pursuant to Article 2(2) of the Employment Regulations 1999, if the domestic worker is not a member of the employer's family but they live in their home they will not qualify for NMW for work done for their household if they are treated as a member of the family which includes:

- sharing in the tasks and leisure activities of the family, and
- having meals and accommodation provided free and as if they were a member of the employer's family.

The minimum wage coverage may not be viewed as satisfactory. The exception for workers who are treated as members of the family is open to abuse and is hard to monitor.

Article 12 ILO Convention Provision

PAYMENT IN KIND

1. Domestic workers shall be paid directly in cash at regular intervals at least once a month. Unless provided for by national laws, regulations or collective agreements, payment may be made by bank transfer, bank cheque, postal cheque, money order or other lawful means of monetary payment, with the consent of the worker concerned.
2. National laws, regulations, collective agreements or arbitration awards may provide for the payment of a limited proportion of the remuneration of domestic workers in the form of payments in kind that are not less favourable than those generally applicable to other categories of workers, provided that measures are taken to ensure that such payments in kind are agreed to by the worker, are for the personal use and benefit of the worker, and that the monetary value attributed to them is fair and reasonable.

Corresponding National Law or Regulation

Pursuant to Article 9 of the NMW Regulations, accommodation is the only payment in kind that can count towards reaching the NMW.

Law or Regulation covering other workers but not domestic workers

Not applicable.

Notes/Recommendations/Analysis

The maximum 'Accommodation Offset' amount for the purposes of the National Minimum Wage calculation is currently £33.11 a week.

If the worker does not qualify for NMW (as discussed above in relation to Article 11), then there is no legislation governing how much of the worker's salary can be payment in kind.

Even if domestic workers do benefit from the protection under the NMW legislation, this does not cover the full list of ILO intended protections to domestic workers "that measures are taken to ensure that such payments in kind are agreed to by the worker, are for the personal use and benefit of the worker, and that the monetary value attributed to them is fair and reasonable".

Article 13

ILO Convention Provision

OCCUPATIONAL SAFETY AND HEALTH

Right to a safe and healthy working environment, ensuring the occupational safety and health of domestic workers.

Corresponding National Law or Regulation

Not applicable.

Law or Regulation covering other workers but not domestic workers

HEALTH AND SAFETY AT WORK ACT 1974

The Health and Safety at Work Act 1974 ("HSWA") is the primary piece of legislation covering work-related health and safety in England and Wales. This Act does not extend to Scotland.

Section 2(1) of HSWA states that, "It shall be the duty of every employer to ensure, so far as is reasonably practicable, the health, safety and welfare at work of all his employees".

Section 51 of HSWA is entitled "Exclusion of application to domestic employment" and states that "Nothing in this Part [Part I Health, Safety and Welfare in connection with Work, and Control of Dangerous Substances and

Certain Emissions into the Atmosphere] shall apply in relation to a person by reason only that he employs another, or is himself employed, as a domestic servant in a private household”.

Accordingly, domestic workers employed in a private household are currently not afforded the same right to a safe and healthy working environment as other employees.

Notes/Recommendations/Analysis

There is no corresponding national law or regulation in the UK which ensures the occupational health and safety of domestic workers specifically.

The HSWA will need to be revised if it is to become compliant with Article 13 of the Convention as currently Part 1 of the HSWA, which contains the health, safety and welfare provisions in connection with work, does not apply to domestic workers.

To bring the HSWA in line with the Convention, section 51 of the HSWA should be repealed/amended in order for Part 1 to apply also to domestic workers in private households.

Article 14 ILO Convention Provision

SOCIAL SECURITY

Domestic workers enjoy conditions that are not less favourable than those applicable to workers in respect of social security protection, including with respect to maternity.

Corresponding National Law or Regulation

SOCIAL SECURITY CONTRIBUTIONS AND BENEFITS ACT 1992 (“SSCBA”)

If a worker is “employed” (and therefore constitutes an “employed earner” for the purposes of the SSCBA) (please see below for guidance notes on the meaning of this term), their employer is required by law to account for income tax and national insurance contributions via HMRC’s PAYE system.

Whilst, as set out in below, under the UK Immigration Rules domestic workers in private accommodation are not entitled to public funds, public funds do not include benefits that are based on National Insurance Contributions.

Benefits to which a person is entitled as a result of National Insurance Contributions include:

- contribution-based jobseeker’s allowance;
- incapacity benefit;

- retirement pension;
- widow's benefit and bereavement benefit;
- guardian's allowance;
- statutory maternity pay;
- maternity allowance; and
- contribution-related employment and support allowance.

Domestic workers also have the right to paid holiday and Statutory Sick Pay (SSP).

A female domestic worker who becomes pregnant whilst working is entitled to the following rights:

Time off: 26 weeks / 6 months "ordinary maternity leave". This is a right no matter how long, or for how many hours the worker has worked for her employer.

- Statutory Maternity Pay: please see below.
- A pregnant domestic worker has a right to paid time-off to attend ante-natal care appointments.

To qualify for statutory maternity pay, one must satisfy two basic rules: (i) the continuous employment rule; and (ii) the earnings rule, i.e. the worker:

- (i) must have been employed by her employer for a continuous period of at least 26 weeks into the qualifying week (the 15th week before the week in which the baby is due); and
- (ii) earn at least the minimum amount at which National Insurance contributions are payable. This is £107 a week if the end of one's qualifying week is in the 2012–13 tax year.

Law or Regulation covering other workers but not domestic workers

SOCIAL SECURITY CONTRIBUTIONS AND BENEFITS ACT 1992

If the worker is "self-employed" (and therefore constitutes a "self-employed earner" for the purposes of the SSCBA), the worker is responsible for looking after his/her own income tax, national insurance contributions and any VAT.

HMRC provided the following guidance notes as to whether a worker is employed or self-employed:

"An individual worker is likely to be employed if the answer is 'yes' to most of the following questions.

- Does the worker have to do the work themselves?
- Can you tell the worker where to work, when to work, how to work or what to do?
- Can you move the worker from task to task?
- Does the worker have to work a set number of hours?
- Is the worker paid a regular wage or salary?

- Can the worker get overtime pay or bonus payments?
- Is the worker responsible for managing anyone else engaged by you?

Your worker is likely to be self-employed if the answer is 'yes' to one or more of these questions.

- Can the worker hire someone to do the work, or take on helpers at their own expense?
- Can the worker decide where to provide the services of the job, when to work, how to work and what to do?
- Can the worker make a loss as well as a profit?
- Does the worker agree to do a job for a fixed price regardless of how long the job may take?"

Whilst a domestic worker may be entitled to certain "contributory benefits" (as set out in above) by virtue of his/her National Insurance Contributions, there are other kinds of benefits provided by the state to which the domestic worker would not be entitled.

Such benefits to which the domestic worker would not be entitled are:

- non-contributory benefits: such as attendance allowance, severe disablement allowance, invalid care allowance, disability living allowance, guardian's allowance and certain retirement pensions;
- industrial injury benefit: such as the disablement pension in relation to industrial accidents and diseases;
- income-related benefits: such as income support, family credit, disability working allowance, housing benefit, council tax benefit and social fund payments; and
- child benefit.

Notes/Recommendations/Analysis

Generally, the only people who can claim public funds are British citizens, those with permanent residence, refugees and their dependents, and those with exceptional leave to remain. There are very few other circumstances in which one can claim public funds.

Section 159A (vii) (Domestic Workers in Private Households) of Part 5 of the Immigration Rules (Persons seeking to enter or remain in the United Kingdom for employment) states that a domestic worker in a private household is "without recourse to public funds". Consequently, domestic workers under this visa are not able to claim most benefits, tax credits or housing assistance that are paid by the state including:

- income-based jobseeker's allowance;
- income support;

- child tax credit;
- working tax credit;
- a social fund payment;
- child benefit;
- housing benefit;
- council tax benefit;
- state pension credit;
- attendance allowance;
- severe disablement allowance;
- carer's allowance;
- disability living allowance;
- an allocation of local authority housing;
- local authority homelessness assistance;
- health in pregnancy grant; and
- income-related employment and support allowance.

The current position under UK law is compliant with the Convention in so far as domestic workers enjoy the same right as other workers to maternity protection, as well as, inter alia, sick pay, incapacity benefit and bereavement benefit.

Domestic immigrant workers, however, are currently not afforded recourse to public funds, pursuant to Section 159A (vii) (Domestic Workers in Private Households) of Part 5 of the Immigration Rules. In order for domestic immigrant workers to have the same rights as other workers, the Immigration Rules would have to be amended to allow domestic workers access to public funds.

Article 15 **ILO Convention Provision**

REGULATION OF RECRUITMENT/EMPLOYMENT AGENCIES

Protect domestic workers, including migrant domestic workers, recruited or placed by private employment agencies, from abusive practices.

- (a) Determine conditions governing the operation of private employment agencies;
- (b) Adequate machinery and procedures exist for the investigation of complaints, alleged abuses and fraudulent practices;
- (c) Members, and where appropriate, in collaboration with other members, provide adequate protection for and prevent abuses of domestic workers recruited or placed in their territory by private employment agencies;

- (d) Where workers are recruited to one country for work in another, conclude bilateral, regional or multilateral agreements;
- (e) Fees charged by private employment agencies are not deducted from the remuneration of domestic workers.

Corresponding National Law or Regulation

- a. The Employment Agencies Act 1973 ("**EAA**") and the Conduct of Employment Agencies and Employment Businesses Regulations 2003 (SI 2003/3319), as amended by the Conduct of Employment Agencies and Employment Businesses (Amendment) Regulations 2007 (SI 2007/3575) and the Conduct of Employment Agencies and Employment Businesses (Amendment) Regulations 2010 (SI 2010/1782) (the "**Conduct Regulations**") determine conditions governing the operation of private employment agencies.

Note also the Agency Workers Regulations 2010 (the "**Agency Workers Regulations**"), which provide certain protections to temporary workers.

The Agency Workers Regulations 2010 also require employers to give equal treatment to agency workers and permanent staff. They provide for "**Day 1 Rights**" (i.e. to be informed of relevant vacancies in the hirer's organisation and to be treated no less favourably than a permanent worker in relation to "collective facilities and amenities") and "**Qualifying Period Rights**" (i.e. rights arising following a 12 week qualifying period, that a worker is to be given the same basic contractual terms as a permanent employee).

- b. The Conduct Regulations do not set out procedures for the investigation of complaints. However the Employment Agency Standards Inspectorate ("**EAS**") is a governmental body to which complaints about employment agencies may be referred.

The Agency Workers Regulations allow an agency worker to make a complaint to an employment tribunal for certain specified reasons. These are that:

- a worker has been deprived of Day 1 Rights;
- a worker has been deprived of Qualifying Period Rights; and/or
- a worker has been subjected to a detriment after enforcing its right under the Agency Workers Regulations ("**Detriment**").

An employment tribunal may order the following remedies if it finds the complaint well founded:

- make a declaration as to the rights of the complainant;
- order the respondent to pay compensation to the complainant. There is no minimum compensation for breach of a Day 1 Right whereas for breach of a Qualifying Period Right or Detriment a minimum two weeks' pay will usually be ordered;
- recommend the respondent takes action to reduce the adverse effect on the complainant.

An agency worker who is employed by the agency can claim they were unfairly dismissed after raising rights under the Agency Workers Regulations. If the employment tribunal finds the complaint well-founded then it can order unfair dismissal remedies.

- If an employment tribunal finds that the respondent deprived a worker of rights under the Agency Workers Regulations by means of the structure of an assignment or assignments, it has the power to award up to £5,000 in compensation; and/or declare that the worker is deemed to have completed the 12 week qualifying period.
 - If an employment tribunal finds that the respondent has failed to provide information or an evasive or equivocal written statement then it may draw any inference which it considers it just and equitable to draw.
- c. The Conduct Regulations contain provisions which ensure that employment businesses conduct checks to ensure that the hirer complies with any legal requirements in order for the work-seeker to fill the role which the work-seeker intends to fill.

This affords some limited protection to the worker since the employment business is required to take steps to ensure that the worker is suitable for the work and can fulfil any legal or professional requirements necessary to undertake the work.

Pursuant to Regulation 20(1) of the Conduct Regulations:

1. Neither an agency nor an employment business may introduce or supply a work-seeker to a hirer unless the agency or employment business has:
 - a. taken all such steps, as are reasonably practicable, to ensure that the work-seeker and the hirer are each aware of any requirements imposed by law, or by any

professional body, which must be satisfied by the hirer or the work-seeker to enable the work-seeker to work for the hirer in the position which the hirer seeks to fill; and

- b. without prejudice to any of its duties under any enactment or rule of law in relation to health and safety at work, made all such enquiries, as are reasonably practicable, to ensure that it would not be detrimental to the interests of the work-seeker or the hirer for the work-seeker to work for the hirer in the position which the hirer seeks to fill.”

Under Regulation 21, of the Conduct Regulations agencies and employment businesses must provide detailed information on every assignment to both the hirer and the work-seeker when proposing a work-seeker to a hirer, or offering a work-seeker a position with a hirer.

- d. No bilateral, regional or multilateral agreements exist to which the UK is a party. However certain origin countries have set limits on how much recruitment agencies can charge to place their workers in another country but such limits would only be enforceable in domestic courts rather than UK courts.
- e. Section 6 of the EAA prohibits a person carrying on an employment agency from requesting or directly or indirectly receiving any fee from any person for providing services (whether by the provision of information or otherwise) for the purpose of finding him employment or seeking to find him employment.

However Section 6 of the EAA does not prevent an employment agency from charging a fee for any ancillary services it may provide the worker, nor does it restrict the manner in which such fee may be paid.

Law or Regulation covering other workers but not domestic workers

Since the Convention defines “domestic work” as work performed in or for a household, and a “domestic worker” as any person performing domestic work in an employment relationship (Article 1) those who are not in an employment relationship, including agency workers who are viewed as self-employed, are thought to be excluded from the scope of the Convention.

Notes/Recommendations/Analysis

Further legislation is required to implement this Article and in particular legislation should be requested to (i) require bilateral, regional or multilateral agreements where workers are recruited to one country for work in another,

conclude bilateral, regional or multilateral agreements and (ii) prohibit deduction of fees charged by private employment agencies from the remuneration of domestic workers.

Article 16 ILO Convention Provision

ACCESS TO DISPUTE SETTLEMENT PROCEDURES

Effective access to courts, tribunals or other dispute resolution mechanisms under conditions that are not less favourable than those available to workers generally.

Corresponding National Law or Regulation

HUMAN RIGHTS ACT 1998 Article 6 (**Right to a fair trial**) of the ECHR as incorporated into English law by the HRA guarantees everyone a right to access to the UK court system. Domestic workers have the same access as others to UK courts.

TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007 The Tribunals, Courts and Enforcement Act 2007 sets out the procedures for tribunals, which includes employment tribunals. Domestic workers have the same access as others to UK employment tribunals.

However please see below for practical difficulties unique to migrant domestic workers in making claims in the courts or in a tribunal.

Law or Regulation covering other workers but not domestic workers

Not applicable.

Notes/Recommendations/Analysis

Lord Hylton introduced (without success) in 1996 a Private Members' Bill to amend the Immigration Act 1971, the "Overseas Domestic Workers (Protection) Bill" (the "**Bill**"). The Bill identified three areas where migrant domestic workers were perceived to be at a disadvantage to other workers and suggested solutions:

1. [The Bill] would enable qualifying domestics to take work while their case [against an employer] is pending or in progress. This should not be construed as allowing them to take any job which may be on offer, since such a person is unlikely to be qualified for anything other than domestic work and in any case the permission to work only lasts while the case is pending or in progress.

2. protection against deportation; this is vitally important, since it is unrealistic to expect poor and possibly unpaid workers to maintain themselves in a third country, while preparing and fighting a case in the UK.
3. Permit a plaintiff or witness to overstay their leave of entry or not to fulfil their conditions of leave while their case is pending or in progress.

Although domestic workers have the same access to dispute resolution mechanisms generally, more could be done to enable domestic overseas workers to avail themselves of these rights.

Article 17 **ILO Convention Provision**

LABOR INSPECTION

1. Develop and implement measures for labour inspection, enforcement and penalties.
2. Measures shall specify the conditions under which access to household premises may be granted, having due respect for privacy.

Corresponding National Law or Regulation

Not applicable.

Law or Regulation covering other workers but not domestic workers

HEALTH AND SAFETY AT WORK ETC ACT 1974

S 51 OF HEALTH AND SAFETY AT WORK ETC ACT 1974 “Nothing in the Health and Safety at Work etc Act 1974 Pt I (ss 1–54) applies in relation to a person by reason only that he employs another, or is himself employed, as a domestic servant in a private household.”

Notes/Recommendations/Analysis

Whilst the Health and Safety at Work etc Act 1974 provides certain powers to inspectors to inspect certain workplaces, this does not extend to private households.

Measures to implement the inspection of domestic workers' employment/ living conditions would need to be developed. At present, it falls to the worker themselves to raise any grievance with respect to their treatment, unless a criminal offence has been committed in which case a case can be brought by the police if they are made aware of the offence.

Article 18 **ILO Convention Provision**

IMPLEMENTATION

Each Member shall implement the provisions of this Convention, in consultation with the most representative employers and workers organizations, through laws and regulations, as well as through collective agreements or additional measures consistent with national practice, by extending or adapting existing measures to cover domestic workers or by developing specific measures for them, as appropriate.

Corresponding National Law or Regulation

Not applicable.

Law or Regulation covering other workers but not domestic workers

THE HEALTH AND SAFETY (CONSULTATION WITH EMPLOYEES) REGULATIONS 1996

The Health and Safety (Consultation with Employees) Regulations 1996: "Where there are employees who are not represented by safety representatives under the Safety Representatives and Safety Committees Regulations 1977, the employer must consult those employees in good time on matters relating to their health and safety at work."

However, for these purposes 'employee' has the meaning assigned to it by the Health and Safety at Work etc Act 1974 s 53(1) but does not include a person employed as a domestic servant in a private household.

The reason for the above is that the Framework Directive on Health and Safety (89/391/EEC) provides that for its purposes a worker is "any person employed by an employer, including trainees and apprentices but excluding domestic servants".

Notes/Recommendations/Analysis

Due to domestic workers' vulnerability to abuse and exploitation, we urge the UK government to sign and ratify the Convention.

Migrant domestic workers who are issued with a visa should be provided with information about their rights in the UK. The information leaflet provided to them should be translated to ensure that they receive information in their own language and are thus able to understand it.

Knowledge of their rights and of where to turn to for support would reduce migrant domestic workers' vulnerability to abuse and exploitation.

On 16 June 2011, the British government abstained in a vote at the International Labour Organization (ILO) to adopt this Convention for domestic workers.

Overall, 83 per cent of ILO members voted for the Convention, with only 3 per cent against, and 13 per cent abstaining. All worker representatives, all other governments and many employer representatives voted in favour of the Convention.

During the negotiations for the Convention, the UK government made it clear that whilst it supported the principle of strengthening protections for domestic workers around the world, it would not necessarily support a Convention that it saw as being incompatible with existing UK legal provisions for domestic workers. The business department said it did “strongly support” the principles enshrined in the Convention. But a spokesman said: “The UK already provides comprehensive employment and social protections to domestic workers and we do not consider it appropriate or practical to extend criminal health and safety law, including inspections, to private households employing domestic workers.”

Representative organisations that can be involved are the Trades Union Congress (TUC), the campaigning groups Kalayaan and Justice for Domestic Migrant Workers (J4D).

FRANCE

Summary

LEGAL FRAMEWORK UNDER FRENCH LAW

- The Labour Code (“**LC**”): Article L7221-2 LC lists the provisions of the LC applicable to domestic workers;
- The “Particulier employeur: salariés convention collective, 24/11/199” (the Individual Employer: Collective Labor Agreement, hereinafter the “**CLA**”) which specifically applies to domestic workers and their employers;
- The relevant *jurisprudence* (case law);
- The French Constitution dated 27 October 1946;
- The 1996 revised European Social Charter, ratified in 2000; and
- The European Convention on Human Rights ratified on 3 May 1974.

OVERVIEW

French law is consistent with and in certain respects more favorable than the Convention. Any changes to the LC would have to be implemented by either a vote of the French Parliament or through a governmental Decree, depending on whether it relates to the legal or regulatory provisions of the LC. The CLA can only be amended by the signing parties (i.e. employee and employer’s representative’s organizations) in accordance with articles L. 2222-5, L. 2261-7 and L. 2261-8 of the French Labor Code.

Article 1 ILO Convention Provision

DEFINITIONS

For the purpose of the Convention:

- The term “domestic work” means work performed in or for a household or households;
- The term “domestic worker” means any person engaged in domestic work within an employment relationship;
- A person who performs domestic work only occasionally or sporadically and not on an occupational basis is not a domestic worker.

Corresponding National Law or Regulation

ARTICLE 1(A) CLA The terms domestic work means “all or part of the work performed in a household that is of a domestic character or otherwise supports family needs”.

ARTICLE L7221-1 LC The term domestic worker means “any salaried employee hired by individuals to perform domestic work.”

ANNEX 3 (ARTICLE 5) CLA Any person who occasionally performs domestic work can be paid by a *chèque emploi service*.

Law or Regulation covering other workers but not domestic workers

Not applicable.

Notes/Recommendations/Analysis

French law is consistent with Article 1 of the Convention.

WITH RESPECT TO ARTICLE 1(A) OF THE CONVENTION This definition of domestic worker in the CLA is broad and would include babysitting, assistance for ageing people, cleaning etc.

WITH RESPECT TO ARTICLE 1(B) OF THE CONVENTION Under the LC, every individual who performs domestic work is a domestic employee – even if on a part-time basis. This is not consistent with Article 1(c) of the Convention which expressly states that people who perform occasional/sporadic work (not on an occupational basis) are not domestic workers.

WITH RESPECT TO ARTICLE 1(C) OF THE CONVENTION The definition of a domestic worker covers both domestic workers with an employment contract and domestic workers paid by a “*chèque emploi service*” (which is at once an instrument of payment and an employment contract, but can only be used for a maximum period of 8 hours per week or one month per year).

An employment contract is mandatory for other methods of payment permitted by law, e.g., by cash, check or bank transfer (Article L.3241-1 LC).

Article 3 ILO Convention Provision

FREEDOM OF ASSOCIATION AND RIGHT TO COLLECTIVE BARGAINING

1. Each member shall take measures to ensure the effective promotion and protection of the human rights of all domestic workers, as set out in this Convention.
2. Promote and realize the fundamental principles and rights at work such as collective bargaining, elimination of all forms of forced or compulsory labour, and abolition of child labour.
3. Protect the right of domestic workers and employers of domestic workers to join organizations, federations and confederations of their own choosing.

Corresponding National Law or Regulation

ARTICLE 1(C) CLA (FREEDOMS OF OPINION AND ASSOCIATION) “The parties recognize the freedom of opinion and freedom of association through trade unions.”

SECTION 6 OF PREAMBLE TO THE FRENCH CONSTITUTION, ARTICLE 11 OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS, AND ARTICLE 5 OF THE EUROPEAN SOCIAL CHARTER provide that any worker can defend his/her rights and interests by trade union action and is free to join or found the trade union of his/her choice.

ARTICLE 6 OF THE EUROPEAN SOCIAL CHARTER specifically promotes collective bargaining by notably ordering states to encourage joint consultation between employers and workers and the regulation of working conditions by a collective bargaining agreement.

ARTICLE 4 OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS expressly prohibits all forms of slavery, servitude or forced labour.

ARTICLE 225-13 OF THE FRENCH CRIMINAL CODE punishes with 5 years of imprisonment and €150,000 fine the use of the services of a vulnerable person without the provision of any remuneration or of a clearly sufficient remuneration.

ARTICLE 225-14 OF THE FRENCH CRIMINAL CODE also punishes with 5 years of imprisonment and €150,000 fine the submission of vulnerable individuals to working or housing conditions that are incompatible with human dignity.

Note: the relevant provisions in relation to child labour are set forth below under Article 4 of the Convention.

Law or Regulation covering other workers but not domestic workers

Not applicable.

Notes/Recommendations/Analysis

French law adequately reflects Article 3 of the Convention.

Article 4 ILO Convention Provision

CHILD LABOUR

1. Minimum age of domestic worker is:
 - a. consistent with the provisions of the Minimum Age Convention, 1973 and Worst Forms of Child Labour Convention (1999);
 - b. age of domestic worker should not be lower than that established by national laws and regulations for workers generally.

2. Domestic workers who are under the age of 18 and above the minimum age of employment are not deprived of compulsory schooling, further education or vocational training.

Corresponding National Law or Regulation

ARTICLE 24 CLA (YOUNG WORKERS)

- a. **Minimum age:** teenagers between the age of 14 and 16 can only be employed for half of their school holidays, and solely for the performance of light tasks;
- b. **Conclusion of the employment contract:** the employment contract of young people under the age of 16 must be signed by their legal representative, after the minor has accepted the terms of the contract. That of young people between the age of 16 and 18 can be signed by the minor with parental authorization;
- c. **Working hours:** The period of weekly work is the same as that envisaged for adults under Article 15; but the young worker cannot work overtime;

Article 15 provides that the conventional duration of actual work for a domestic worker is 40 hrs and that overtime hours must be adequately remunerated.

- d. **Drudgery:** it is forbidden to employ young workers under the age of 18 to perform heavy works that exceed their strength, and to manipulate dangerous products;
- e. **Night work:** night work is forbidden for young workers under the age of 18.

Night work is any work between 10pm and 6am.

The minimum duration of night rest for young workers cannot be less than 12 consecutive hours;

- f. **Weekly rest:** Young workers have the right to at least 24 consecutive hours of rest per week given on Sunday, in addition to half a day within the framework of the work schedule;
- g. **Moral protection:** employers hiring young workers under the age of 18 must ensure the maintenance of morality and decency at the workplace;
- h. **Wage:** The wage applicable to young workers under the age of 18 and of normal physical capacity is reduced as follows:
 - 20% under 17
 - 10% between 17 and 18.

Such reduction does not apply to young workers with 6 months of professional practice.

- i. **Holidays for workers under the age of 21:** regardless of his seniority with his employer, the young worker under 21 years old at the 30th April of the previous year can benefit from a 1 month holiday on demand;
- j. **Leave for professional training:** the employer must afford young workers following professional courses during working hours the time and freedom to attend such courses.

Law or Regulation covering other workers but not domestic workers

Not applicable.

Notes/Recommendations/Analysis

French law provides young workers broader protection than Article 4.

Article 5 ILO Convention Provision

PROTECTION FROM ABUSE, HARASSMENT AND VIOLENCE

Enjoy effective protection against all forms of abuse, harassment and violence.

Corresponding National Law or Regulation

ARTICLE 26 CLA (MORAL PROTECTION – VIOLENCE AT THE WORK PLACE)

“Employers must ensure the maintenance of morality and decency at the work place.”

French courts have interpreted this provision as requiring the employer to protect the domestic worker from any form of violence (see Angers Court of Appeals, 15 March 2010, n°10/01002).

Moral Harassment

Articles L1152-(1-6) LC provide as follows:

LC ARTICLE L1152-1 “No paid employee shall be subjected to repeated acts of moral harassment whose object or effect is a degradation of their working conditions likely to prejudice their rights and dignity, affect their physical or mental health or jeopardize their professional future.”

LC ARTICLE L.1152-2 “All employees, interns or trainees may not be penalized, dismissed, or subjected to direct or indirect discriminatory measures in particular as regards remuneration, training, reclassification, assignment, qualification, classification, promotion, transfer or renewal of contract, for being or refusing to

be subjected to repeated instances of moral harassment, or for bearing witness to or reporting such actions.”

LC ARTICLE L.1152-3 “Any termination of employment contract that would violate the provisions of Articles L. 1152-1 to L. 1152-2 and any provision or act to the contrary, is void.”

LC ARTICLE L.1152-4 “Employers must take all necessary steps to prevent moral harassment. A copy of the text of Article 222-33-2 of the Penal Code is to be posted in the workplace”.

LC ARTICLE L.1152-5 “Any employee who carried out acts of moral harassment is liable to disciplinary action.”

LC ARTICLE L.1152-6 “A mediation procedure may be initiated by any persons in an enterprise who feel they have been a victim of moral harassment or by the persons accused of that action.

The mediator is chosen by agreement between the plaintiff and the employer.

The mediator examines the interpersonal relations of the parties. He attempts to reconcile their differences and submits written proposals for ending the harassment.

If mediation fails, the mediator informs the parties of any applicable penalties and of the protection granted to the victim under the complaints procedure.”

Sexual Harassment

Articles L1153-(1-6) LC provide as follows:

LC ARTICLE L.1153-1 “Employees shall not be subject to:

1. Sexual harassment, defined as any repeated behavior or words intended which either undermine one’s dignity by their humiliating or degrading nature or create a situation that is hostile, intimidate or offensive to the employee;
2. Other related conduct deemed sexual harassment consisting in all forms of severe pressure to obtain sexual favors even if not repeatedly exercised in actual or apparent authority, for one’s own benefit or for the benefit of another.”

LC ARTICLE L.1153-2 “All employees, interns or trainees and applicants to a job position may not be penalized, dismissed, or subjected to direct or indirect discriminatory measures in particular as regards remuneration, training, reclassification, assignment, qualification, classification, promotion, transfer or renewal of contract, for being or refusing to be subjected to repeated instances

of sexual harassment as defined under Article L.1153-1, including pursuant to 1° of the latter Article if the behavior or words have not been reported.”

LC ARTICLE L.1153-3 “All employees, interns or trainees may not be penalized, dismissed, or subjected to discriminatory measures for bearing witness to or reporting such actions.”

LC ARTICLE L.1153-4 “Any provision or act that violate Articles L.1153-1 to 1153-3 is void.”

LC ARTICLE L.1153-5 “Employers must take all necessary steps to prevent sexual harassment. A copy of the text of Article 222-33-2 of the Penal Code is to be posted in the workplace and inside or at the door of the room where the job interview is to take place”.

LC ARTICLE L.1152-6 “Any employee who carried out acts of sexual harassment is liable to disciplinary action.”

Law or Regulation covering other workers but not domestic workers

Not applicable.

Notes/Recommendations/Analysis

The provision of the CLA should be amended to reinforce the protection against violence at the work place.

Note that the decision of the Court of Appeal is only binding on lower courts. We are however of the view that Court de Cassation is unlikely to overturn this decision.

Article 6 ILO Convention Provision

RIGHT TO PRIVACY

Fair terms of employment as well as decent working conditions and, if they reside in the household, decent living conditions that respect their privacy.

Corresponding National Law or Regulation

The CLA sets out detailed requirements with respect to:

- Domestic workers residing with the employer (Article 5)
- Night work (Article 6)
- Termination of the employment contract (Articles 11–12)
- Working hours (Article 15)
- Paid leave (Article 16)
- Other leave (Article 17)
- Bank holidays (Article 18)

- Medical Insurance (Article 19)
- Salaries (Article 20)
- Hygiene and housing (Article 21)
- Maternity / Adoption / maternity leave (Article 23)
- Violence in the workplace (Article 26)

SECTION 11 OF THE PREAMBLE TO THE FRENCH CONSTITUTION (THE FRENCH CONSTITUTION IS UNIVERSAL AND ITS APPLICATION IS NOT LIMITED TO CITIZENS) “[The Nation] shall guarantee to all, notably to children, mothers and elderly workers, protection of their health, material security, rest and leisure.”

PART I.2 EUROPEAN SOCIAL CHARTER “All workers have the right to just conditions of work.”

PART I.3 EUROPEAN SOCIAL CHARTER “All workers have the right to safe and healthy working conditions.”

ARTICLE 8(1) EUROPEAN CONVENTION ON HUMAN RIGHTS “Everyone has the right to respect for his private and family life, his home and his correspondence.”

Law or Regulation covering other workers but not domestic workers

Not applicable.

Notes/Recommendations/Analysis

There are no specific provisions in the CLA about the respect of privacy but we are of the view that the general right to privacy in the European Convention on Human Rights adequately protects domestic workers.

Article 7 ILO Convention Provision

TERMS AND CONDITIONS IN EMPLOYMENT CONTRACT

Domestic workers are informed of their terms and conditions of employment in an appropriate, verifiable and easily understandable manner and preferably, where possible, through written contracts.

Corresponding National Law or Regulation

ARTICLE 7 CLA “The agreement between the employer and the employee is established by a written contract. The contract can be drafted at the time of employment, or at the latest, at the end of the employee’s trial period (“*période d’essai*”).

In the case of the latter, a letter of employment ("*lettre d'embauche*") specifying the trial period must be established.

- A permanent contract shall specify the working conditions and all specific conditions notably the method of payment, the basis of social contributions (fixed or real by reference to a model contract in Annex 1).
- A temporary contract is subject to specific rules set out in the Labor Code (see below).
- The *chèque emploi service*: reference is made to Annex 3."

As stated above in relation to Article 1 of the Convention, the definition of a domestic worker covers domestic workers paid by a "*chèque emploi service*" (which is at once an instrument of payment and an employment contract, but can only be used for a maximum period of 8 hours per week or one month per year).

LC ARTICLE L1242-12 "The temporary contract shall be in writing and include a precise definition of its object; otherwise it will be deemed a permanent contract.

The temporary contract shall include:

1. The name and professional qualifications of the person being replaced (when it is concluded for the purpose of replacing another employee pursuant to LC Article L1242-2);
2. The date of termination or, where appropriate, a renewal clause when it includes a precise term;
3. The minimum duration of the contract if it is not concluded for a precise term;
4. The job description specifying, where appropriate, whether the role presents particular health or security risks for employees (as listed in LC Article L4154-2), the type of work to be undertaken, or, if the contract is entered into to provide additional training to the employee in accordance with LC Article L1242-3, the nature of the activities that the employee will be carrying out in the company;
5. The collective agreement applicable;
6. The duration of the trial period (if any);
7. The amount of remuneration and its various components, including bonuses and supplementary payments (if any); and
8. The name and address of the supplementary pension fund and, where applicable, those of the complementary insurance fund."

Law or Regulation covering other workers but not domestic workers

The provisions of the LC relating to the terms and conditions of permanent contracts are not applicable to domestic workers.

Notes/Recommendations/Analysis

The “model” permanent contract at CLA Annex 1 sets out the specific terms and conditions of employment which largely overlap with terms and conditions set out in Article 7 of the Convention.

In relation to temporary contracts, LC Article L1242-12 sets out the specific terms and conditions of employment (which largely reflect the conditions in Article 7 of the Convention).

Note that unless a domestic worker is paid by “cheque emploi service”, the worker is entitled to an employment contract that complies with the terms and conditions set out in the CLA and LC.

Article 8 ILO Convention Provision

MIGRANT DOMESTIC WORKERS

1. National laws and regulations shall require migrant domestic workers who are recruited in one country for domestic work in another receive a written job offer or contract of employment that is enforceable in the country in which the work is to be performed.
2. Laws, regulations, or other measures shall specify the conditions under which migrant domestic workers are entitled to repatriation.

Corresponding National Law or Regulation

ARTICLE L.5221-2 LC CORRESPONDS TO ARTICLE 8(1) OF THE CONVENTION

“To enter into France with a view of exercising a salaried profession, the migrant worker must provide (1) a visa and relevant documents required by international conventions and applicable rules, and (2) their contract of employment or a work permit.”

With respect to Article 8(2) of the Convention

For non EU/Swiss citizens

ARTICLE R5221-1 LC Aliens who are neither EU nor Swiss citizens may not legally work in France without a proper work permit delivered by the French authorities.

ARTICLE R5221-11 LC

The application for a work permit is generally submitted by the employer.

More generally, Article L211-1 of the *Code de l'entrée et du séjour des étrangers et du droit d'asile* (Code of Entry and Residence of Aliens and of the Right to Asylum) requires that aliens entering French territory provide proof of their repatriation guarantees (“documents relatifs aux garanties de son rapatriement”).

For EU/Swiss citizens

As a general rule, EU/Swiss citizens have full access to the European market (an exception is made for the new member states (Bulgaria and Romania) to which have been applied transitional measures and still need a proper work permit). A work permit is not required (article L.121-2 Code of the entry and stay of the aliens and refugees ("Code de l'entrée et du séjour des étrangers et du droit d'asile").

Law or Regulation covering other workers but not domestic workers

Not applicable.

Notes/Recommendations/Analysis

In relation to Article 8(1) of the Convention, the provisions of Article L .5221-2 LC apply to all foreign employees, whatever his/her occupation.

The employment contract could be governed by a different law than French law. It would be enforceable if it abides by the French public order as for instance: the principle of non-discrimination according to age, gender or origin, the principle of equal treatment between national employees and foreign employees. However, there is no requirement that the contract be enforceable in France.

Article 9 ILO Convention Provision

RESIDENCY AND ENTITLEMENTS

1. Free to reach agreement with employer or potential employer on whether to reside in the household.
2. Domestic workers residing in the household are not obliged to remain in the household or with household members during periods of daily and weekly rest or annual leave.
3. Entitled to keep in their possession their travel and identity documents.

Corresponding National Law or Regulation

With respect to Article 9(1) of the Convention:

ARTICLES 5-6 CLA Accommodation provided by the employer (whether inside or outside the household) is freely negotiated by the parties, and is deemed to be a benefit in kind (which is deducted from the domestic worker's net income, except in the case where the domestic worker is required to sleep in the household with no restricted working hours).

ARTICLE 21 CLA Accommodation provided by the employer is deemed to be an

accessory of the labor contract, which must be liberated by the domestic worker at the end of the work contract.

With respect to Article 9(2) of the Convention:

There is no specific provision in the LC or the CLA with respect to Article 9(2) and 9(3) of the Convention. However, in view of the constitutional principle of freedom of movement, (granted by article 4 of the French Human and Citizen Rights Declaration which is universal and thus applies to everyone) any restriction on the domestic worker's freedom of movement will be held unconstitutional.

Law or Regulation covering other workers but not domestic workers

Not applicable.

Notes/Recommendations/Analysis

French law is consistent with Article 9 of the Convention.

In regards to Article 9(2) of the Convention, French legislation provides full protection for the domestic worker; we would nevertheless recommend that a specific provision to that effect be included in the CLA.

Article 10 ILO Convention Provision

WORKING TIME

1. Equal treatment between domestic workers and workers in relation to normal hours of work, overtime compensation, periods of daily and weekly rest and paid annual leave.
2. Weekly rest shall be at least 24 consecutive hours.
3. Periods when domestic workers are not free to dispose of their time and remain at the disposal of the employer are regarded as part of the hours of work.

Corresponding National Law or Regulation

With respect to Article 10(1) of the Convention:

CLA ARTICLE 15 (WORKING HOURS) In accordance with the European directive No. 97/81 dated 15/12/97 published in the OJEC L 14 of 20/1/98, an employee whose normal working hours, as calculated on a weekly basis or on average over an employment period up to one year, are less than 40 hours per week, is a "part-time worker."

An hour of responsible presence corresponds to 2/3 of an actual working hour: see **article 3 a) Definition of responsible presence.**

a. WORKING HOURS FOR FULL-TIME EMPLOYEES

This collective agreement sets the number of hours for actual work at 40 hours per week for a full-time employee.

For posts that do not provide for hours of responsible presence (see article 2: Classification), and in the event the employee remains at the employer's disposal without carrying out actual work, the hours that exceed 40 hours, and within the limit of 4 hours per week, shall be paid at the full rate for the appropriate classification.

This article may be amended in light of the impact that the general development of employment may have on the profession.

b. OVERTIME

Overtime arises when the employee carries out actual work beyond the weekly 40-hour working time.

ARTICLE 16 (A) CLA

Paid annual leave is granted to the domestic worker who has been employed by the same employer during for a minimum of 1 month of presence to work.

With respect to Article 10(2) of the Convention: Article 15 (c) CLA

"The usual daily rest must be stated in the labor contract.

The weekly rest period must at least be of 24 consecutive hours, and be granted, if possible, on Sundays.

An additional half-day rest will be added to these 24 hours, and will be defined in the framework of the work-time organization."

With respect to Article 10(3) of the Convention

The CLA distinguishes between actual working time (period of time under during which the domestic worker remains at the disposal of the employer) and hours of responsible presence ("*heure de présence responsable*") where the domestic worker can use his/her time freely but remains at the disposal of the employer ready to intervene in case of need (the list of domestic work which requires hours of responsible presence are listed in Article 3(b) CLA).

An hour of responsible presence represents $\frac{2}{3}$ of an actual working hour (Article 15 CLA).

As regards jobs without hours of responsible presence, if the worker stays at the employer's disposal without doing any actual work, all hours spent above the 40 hours weekly rate and up to 4 hours a week will be paid in accordance with the full rate of the classification level (article 15 (a) CLA).

Law or Regulation covering other workers but not domestic workers

ARTICLE L 3121-10 (LEGAL WORKING HOURS) The legal working hours for employees are 35 hours by civil week.

ARTICLE L 7221-2 LC/ COUR DE CASSATION, SOC. 17 OCTOBRE 2000 The French Supreme Court stated that the provisions of the Labour code relating to working time are not applicable to domestic workers (Cour de Cassation, soc. 17 octobre 2000).

ARTICLE L. 3121-33 LC (DAILY REST) Employees are entitled to 20 minutes of rest for every 5 hours of work. Collective agreement can provide for a longer period of daily rest.

ARTICLE L.3132-1 LC (WEEKLY REST) It is forbidden to make an employee work more than 6 days per week.

ARTICLE L. 3141-3 LC (PAID ANNUAL LEAVE) To be entitled to paid annual leave the employee must have worked for the same employer for a minimum of 10 effective working days.

Notes/Recommendations/Analysis

The LC and CLA should be amended to bring the provisions relating to the working hours of domestic workers in line with the provisions of the LC applicable to workers generally.

Article 11 ILO Convention Provision

WAGE

Domestic workers enjoy minimum wage coverage where such coverage exists and without discrimination based on sex.

Corresponding National Law or Regulation

ARTICLE 20 CLA

“For an hour of actual work, the gross salary shall not be lower than the minimum conventional wage, or the minimum wage in force, except for any particular legal reductions.”

The CLA sets out the minimum conventional wage on the basis of the nature of the work performed as per Article 2 CLA.

The Paris Court of Appeal has held that despite the limitations in Article L7221-2, the provisions of the LC concerning non-discrimination (Article L1132-1), including in relation to remuneration, are applicable to domestic workers.

Law or Regulation covering other workers but not domestic workers

Not applicable.

Notes/Recommendations/Analysis

French law is in line with Article 11 of the Convention.

Article 12 ILO Convention Provision

PAYMENT IN KIND

1. Domestic workers shall be paid directly in cash at regular intervals at least once a month. Unless provided for by national laws, regulations or collective agreements, payment may be made by bank transfer, bank cheque, postal cheque, money order or other lawful means of monetary payment, with the consent of the worker concerned.
2. National laws, regulations, collective agreements or arbitration awards may provide for the payment of a limited proportion of the remuneration of domestic workers in the form of payments in kind that are not less favourable than those generally applicable to other categories of workers, provided that measures are taken to ensure that such payments in kind are agreed to by the worker, are for the personal use and benefit of the worker, and that the monetary value attributed to them is fair and reasonable.

Corresponding National Law or Regulation

ARTICLE 20(B) CLA “The payment of wages shall be made at a fixed date **at least once a month** and at the latest on the last day of the month.”

ARTICLE 20(D) CLA “When the employer and the employee agree to a *chèque emploi service* (see definition in relation to Article 1 of the Convention above), the employer is not required to provide a pay slip.”

ARTICLE 2 OF ANNEX 3 CLA “The cheque emploi service is a means to settle the remuneration of domestic workers and to discharge any social charges, whether legal or conventional.”

ARTICLE 5 CLA “For a full-time or part-time worker residing in the household of the employer, the housing is a benefit in kind deducted from the net wage of the worker.”

Law or Regulation covering other workers but not domestic workers

LC ARTICLE L3241-1 Unless other specific provisions apply, the wage is paid in cash or by crossed check or by wire transfer to a postal or bank account.

Notes/Recommendations/Analysis

In relation to Article 12(1) of the Convention, there is no specific provision in the CLA or LC that regulated the form of payment.

With respect to Article 12(2) of the Convention, note that there is no specific indication in the CLA about how the value of the full-time residence should be calculated or deducted but this would be freely negotiated between the domestic worker and the employer.

Article 13 ILO Convention Provision**OCCUPATIONAL SAFETY AND HEALTH**

Right to a safe and healthy working environment, ensuring the occupational safety and health of domestic workers.

Corresponding National Law or Regulation

ARTICLE 21 (HYGIENE AND HOUSING) “The employers shall provide their employee decent housing, with a window and proper lighting, suitable heating, and normal sanitary installations; the worker will otherwise have access to the employer’s sanitary installations.”

Law or Regulation covering other workers but not domestic workers

The provisions of the LC concerning health and safety (Chapter 4) at the work place are not applicable to domestic workers.

Notes/Recommendations/Analysis

We would recommend that the general provisions in the LC regarding health and safety at the workplace be applicable to domestic workers.

Article 14 ILO Convention Provision**SOCIAL SECURITY**

Domestic workers enjoy conditions that are not less favourable than those applicable to workers in respect of social security protection, including with respect to maternity.

Corresponding National Law or Regulation

ARTICLE L311-2 OF THE FRENCH SOCIAL SECURITY CODE “every employee shall be necessarily affiliated to the social insurances regime, regardless of their nationality, age and gender, and whether they are working for one or several employers.”

ARTICLE 19 CLA

Medical Insurance

The requirements for the application of this Article are listed in schedule 6 “Social Welfare” of this collective agreement.

All employees, irrespective of their working hours, benefit from the provisions of this Article, provided:

- they are bound by an employment contract with an individual employer as from the first day they stop working;
- they provide a justification of their inability to work within 48 hours by sending their employer a notice of cessation of work, unless the circumstances absolutely prevent them from doing so;
- they justify, on the first day of cessation of work, payment of regular wages in the category of employees working for individual employers, namely monthly and consecutive wages paid by one or more individual employers over the past six (6) months. In the event this time period is disrupted for the following reasons: moving of the employer or the employee, death of the employer, moving of the employer in a housing structure and material damage to the individual employer’s domicile, the requirement to justify payment of monthly and consecutive wages in the category of employees working for individual employers shall be extended to the period covering the last twelve (12) months;
- they submit themselves to a counter-examination, if need be;
- they are treated within the territory of the European Union.

THE EMPLOYEES BENEFIT:

- in the event of absence through sickness or accident, duly established by a notice of cessation of work sent to the employer within 48 hours and by counter-examination if need be, and provided they are treated in an EU member-state, from an actual or restated allowance for inability to work which supplements the Social security’s allowance.

This allowance, which cannot be smaller than the one guaranteed by the provisions of article 7 of the national inter-professional agreement dated 10 December 1977, appended to the law No. 78-49 dated 19 January 1978 relating to monthly payment of wages, shall be due:

- on the 1st day on which the Social security allowance is due, in the event of a work-related accident or similar accident,

- on the 8th day, for each cessation of work, in all other cases.
- in the event of a disability recognized by Social security at a rate that is equal to or higher than 66% or in the event of a disability recognized by the health service acting on mandate from the managing organization, from an actual or restated disability pension which supplements that of the Social security.

These guarantees are financed by a pension fund to which employers and employees contribute:

- the allowance provided by the provisions of the law on monthly payment of wages (law No. 78-49 dated 19 January 1978) is exclusively financed by the employer's contributions.
- the allowance provided in supplement to the above allowance is jointly financed by employer and employee contributions.

ARTICLE 23 CLA

(Maternity/Adoption/Parental leave)

"Employees hired by individuals benefit from the specific rules set in out in the Labour Code."

Law or Regulation covering other workers but not domestic workers

Not applicable.

Notes/Recommendations/Analysis

Pursuant to Article 19, domestic workers benefit from medical insurance that is in some respects more advantageous than that provided by the general regime of social security. The protection under French law is therefore broader than that envisaged under Article 14.

Article 15

ILO Convention Provision

REGULATION OF RECRUITMENT/EMPLOYMENT AGENCIES

Protect domestic workers, including migrant domestic workers, recruited or placed by private employment agencies, from abusive practices.

- Determine conditions governing the operation of private employment agencies;
- Adequate machinery and procedures exist for the investigation of complaints, alleged abuses and fraudulent practices;

- (c) Members, and where appropriate, in collaboration with other members, provide adequate protection for and prevent abuses of domestic workers recruited or placed in their territory by private employment agencies;
- (d) Where workers are recruited to one country for work in another, conclude bilateral, regional or multilateral agreements;
- (e) Fees charged by private employment agencies are not deducted from the remuneration of domestic workers.

Corresponding National Law or Regulation

Articles L7232-1 et al LC provide the necessity for the establishment of a recruitment/ employment agency, in the field of services to individuals, to be granted an approval by the relevant administrative authority (i.e. the Prefect of the district where the agency is to be established).

A Decree codified at Articles R7231-1 et al LC specifies the conditions of the approval delivery:

- the legal entity must have appropriate material, human and financial means in order to carry on the activity contemplated;
- the legal entity having several establishments must create a Quality Charter with which all the establishments must comply. The actual respect of the Charter is regularly controlled internally;
- the legal entity must commit to respect technical specifications approved by the relevant ministry;
- the directors of the legal entity must have not been subject to any criminal penalty preventing them to have the quality to manage the activity;
- when the activity is related to minors, the directors of the legal entity must not figure on the national legal file of authors of sexual criminal offences;
- the legal entity must exclusively carry on the activity of recruitment / employment of domestic workers for individuals.

The approval is delivered for 5 years and can be renewed on the same conditions after an external assessment by the relevant authority.

The National Agency of Services to Individuals (*"l'Agence nationale des services à la personne"*) is in charge of receiving and controlling all accounting documents and financial information that must be transmitted by the legal entity every trimester.

Failure to respect such obligations may entail :

- withdrawal of the approval; and/or

- penalties following the statement of disrespect by the Labour Inspectorate or any competent inspection body, during a control.

ARTICLE L5321-2 OF LC No placement can be refused to a person seeking employment or to an employer based on one of the criteria of discrimination listed in Article L1132-1 LC.

ARTICLE L. 5321-3 OF LC No remuneration, direct or indirect, can be requested from a person looking for a job, in return for this person's placement.

ARTICLE L5323-1 OF LC Public workers and agents in charge of controlling the enforcement of Employment law have the power to record breaches of the above-mentioned provisions. When the activity of placement is exercised in breach of these provisions or in case of violation of public order, the administrative authority can, after giving notice to the recruiting agency, order its closing down for a period which cannot exceed 3 months.

Law or Regulation covering other workers but not domestic workers

Not applicable.

Notes/Recommendations/Analysis

The French legislation does not contain provisions as specific as the ones contained in Article 15 of the Convention with regard to domestic workers recruited by a private employment agency.

However, public agents have the power to control the way these agencies are operated and can close them down if they violate public order, which includes abuses and fraudulent practices.

Article 16 ILO Convention Provision

ACCESS TO DISPUTE SETTLEMENT PROCEDURES

Effective access to courts, tribunals or other dispute resolution mechanisms under conditions that are not less favourable than those available to workers generally.

Corresponding National Law or Regulation

THE EUROPEAN CONVENTION ON HUMAN RIGHTS:

RIGHT TO A FAIR TRIAL (ARTICLE 6) Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.

Law or Regulation covering other workers but not domestic workers

Not applicable.

Notes/Recommendations/Analysis

There is no specific provision in the LC or in the CLA.

France like other European member states must comply with the **European Convention on Human Rights** which is part of the French legal framework.

The French Labor Court is competent to hear disputes between domestic workers and individual employers in the same way as it is competent to hear disputes between workers generally and their employers, pursuant to Article L.1411-1.

Article 17 ILO Convention Provision

LABOR INSPECTION

1. Develop and implement measures for labour inspection, enforcement and penalties.
2. Measures shall specify the conditions under which access to household premises may be granted, having due respect for privacy.

Corresponding National Law or Regulation

With respect to Article 17(1):

LC ARTICLE L8112-1

As a general rule, labor inspectors are in charge of ensuring the implementation of the legal provisions of the LC and collective labor agreements.

Together with police officers, they are in charge to detect any offence to the LC and collectives agreements.

LC ARTICLE L 8113-8 Once the offences are recorded, a report is made to the senior labor inspector, who sends it to the Public Prosecutor, who will then decide whether or not to instruct the case.

With respect to Article 17(2):LC Article L8113-1 al.3

The labor inspectors have legal access to household premises where domestic workers perform their work.

However, labor inspectors must be authorised by the householder to access the premises.

More generally, this article has to be balanced with Article 8 European Convention on Human Rights (Right to respect for private and family life):

1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

Law or Regulation covering other workers but not domestic workers

Not applicable.

Notes/Recommendations/Analysis

In relation to Article 17.2 of the Convention, the LC provides for a possible one year prison term and 3750 Euro fine for persons who prevent the labour inspector and its controller from performing their duties (Article L. 8114-1 CLA).

Article 18

ILO Convention Provision

IMPLEMENTATION

Each Member shall implement the provisions of this Convention, in consultation with the most representative employers and workers organizations, through laws and regulations, as well as through collective agreements or additional measures consistent with national practice, by extending or adapting existing measures to cover domestic workers or by developing specific measures for them, as appropriate.

Corresponding National Law or Regulation

If the provisions of the LC are directly negotiated by the legislature; the collective agreements are negotiated in consultation with the most representative employers and workers' organizations, and then extended to all members of the profession. (Article L 222-1 and s LA). Collective agreements can only derogate from the LA in a more favourable way (Article L2251-1 LC).

With respect to international conventions, these are normally negotiated by the State itself and once ratified have a supremacy over the LC and collective agreements.

Law or Regulation covering other workers but not domestic workers

Not applicable.

Notes/Recommendations/Analysis

Not applicable.

ITALY

Article 1 ILO Convention Provision

DEFINITIONS

For the purpose of the Convention:

- (a) The term “domestic work” means work performed in or for a household or households;
- (b) The term “domestic worker” means any person engaged in domestic work within an employment relationship;
- (c) A person who performs domestic work only occasionally or sporadically and not on an occupational basis is not a domestic worker.

Corresponding National Law or Regulation

Under Italian law, domestic work, for both Italian citizens and immigrants, is governed by the provisions of the Italian Civil Code (articles 2240–2246), of Law no. 339 of 1958 (the “**Domestic Labour Law**”) and of the applicable national collective bargaining agreement (*Contratto collettivo nazionale di lavoro* – “**CCNL**”), as subsequently amended, entered into in 2007, which implements the Domestic Labour Law.

The Domestic Labour Law defines “domestic worker” as any person engaged for the “functioning of family life”.

Please note that the provisions of the Domestic Labour Law apply only to those domestic workers who work for the same employer daily for at least 4 hours.

Under Italian norms “daily” means “5 ½ days a week.”

However, Italian law also includes “part-time” arrangements. There are three types of arrangements:

1. The worker lives in the household and besides the monthly wages, the worker is entitled to board and lodging;
2. The worker lives outside the household for at least 4 hours a day and 24 hours a week;

In both cases, the only explicit requirement is that the worker works at least 4 hours per day, for a maximum of 10 hours per day or 8 hours per day depending whether the worker lives in the household or not.

3. Part time: when the worker lives outside the household and works only some days of the week for less than 24 hours a week.

All these three scenarios are explicitly provided by the Domestic Labour Law.

Both the Italian Civil Code and the Domestic Labour Law are ordinary laws under Italian law. Very briefly, this means that any amendment may be made through a simple majority vote of the Italian Parliament followed by the signature of the President of the Italian Republic.

Law or Regulation covering other workers but not domestic workers

With reference to migrant workers, Law no. 189 of 2002 will also apply (the “**Immigration Law**”). This law provides that non-EU persons who wish to live and work in Italy must enter into a work contract (for at least 25 hours per week) **before** leaving their own country of origin and entering Italy.

Once the migrant is admitted to live and work in Italy, with reference to domestic work, the rules applicable are the same as those provided for Italian citizens.

Notes/Recommendations/Analysis

According to both the Italian Government and the relevant unions, Italian laws on domestic work guarantee more rights and protection than the minimum standards set out by the Convention.

However, as further explained below, domestic workers are “discriminated” against in two areas as opposed to other workers:

- (i) Maternity rights; and
- (ii) Dismissal / contract termination.

Discussions are on-going in order to eliminate such discrimination.

Article 3 ILO Convention Provision

FREEDOM OF ASSOCIATION AND RIGHT TO COLLECTIVE BARGAINING

1. Each member shall take measures to ensure the effective promotion and protection of the human rights of all domestic workers, as set out in this Convention.
2. Promote and realize the fundamental principles and rights at work such as collective bargaining, elimination of all forms of forced or compulsory labour, and abolition of child labour.
3. Protect the right of domestic workers and employers of domestic workers to join organizations, federations and confederations of their own choosing.

Corresponding National Law or Regulation

The rights provided by Article 3 of the Convention are constitutional rights under Italian law and no exception is provided with reference to domestic workers.

There are several unions for domestic workers:

- Federcolf;
- Filcams-CGIL;
- Filscat-CISL;
- Uiltucs-UIL.

The last three are subdivisions of the three main national unions.

Law or Regulation covering other workers but not domestic workers

Not applicable.

Notes/Recommendations/Analysis

Not applicable.

Article 4 ILO Convention Provision

CHILD LABOUR

1. Minimum age of domestic worker is:
 - a. consistent with the provisions of the Minimum Age Convention, 1973 and Worst Forms of Child Labour Convention (1999);
 - b. age of domestic worker should not be lower than that established by national laws and regulations for workers generally.
2. Domestic workers who are under the age of 18 and above the minimum age of employment are not deprived of compulsory schooling, further education or vocational training.

Corresponding National Law or Regulation

Under Italian law, the minimum legal working age is 16. The CCNL makes no distinction between full and part-time agreements with regard to minimum age. Moreover, Article 31 of the Italian Constitution states that the State shall protect childhood, promoting necessary institutions. Article 34 also sets out the right to education (for at least 8 years).

With particular reference to domestic work, Article 4 of the Domestic Labour Law establishes that anyone intending to hire a minor (i.e. under the age of 18,

but above the minimum age of 16) shall receive from the parents of the minor a declaration with their written consent to live in the house of the employer. Such declaration must be certified by local authorities (usually, the mayor of the place of residence). The declaration commits the employer to take care of the physical, moral and professional attitude of the minor.

Law or Regulation covering other workers but not domestic workers

Not applicable.

Notes/Recommendations/Analysis

Not applicable.

Article 5 ILO Convention Provision

PROTECTION FROM ABUSE, HARASSMENT AND VIOLENCE

Enjoy effective protection against all forms of abuse, harassment and violence.

Corresponding National Law or Regulation

Under Italian applicable laws, all workers, including domestic workers, enjoy protection against all forms of abuse, harassment and violence.

Law or Regulation covering other workers but not domestic workers

Not applicable.

Notes/Recommendations/Analysis

Not applicable.

Article 6 ILO Convention Provision

RIGHT TO PRIVACY

Fair terms of employment as well as decent working conditions and, if they reside in the household, decent living conditions that respect their privacy.

Corresponding National Law or Regulation

Article 6 of the Domestic Labour Law states that the employer shall guarantee to the domestic worker adequate food, good living conditions and his/her moral and physical integrity.

Such principles are also established by article 34 of the CCNL.

Law or Regulation covering other workers but not domestic workers

Not applicable.

Notes/Recommendations/Analysis

Not applicable.

Article 7 ILO Convention Provision

TERMS AND CONDITIONS IN EMPLOYMENT CONTRACT

Domestic workers are informed of their terms and conditions of employment in an appropriate, verifiable and easily understandable manner and preferably, where possible, through written contracts.

Corresponding National Law or Regulation

Article 2 of the Domestic Labour Law provides that the employer must file the contract at the beginning of the working relationship with the competent local Employment Office.

Further, Article 6 of the CCNL states that the agreement must indicate, inter alia, (i) the starting date of the contract, (ii) the duration of the contract, (iii) whether the domestic worker lives in the employer's house, (iv) working hours, (v) salary and (vi) holidays.

Law or Regulation covering other workers but not domestic workers

Not applicable.

Notes/Recommendations/Analysis

Not applicable.

Article 8 ILO Convention Provision

MIGRANT DOMESTIC WORKERS

1. National laws and regulations shall require migrant domestic workers who are recruited in one country for domestic work in another receive a written job offer or contract of employment that is enforceable in the country in which the work is to be performed.

2. Laws, regulations, or other measures shall specify the conditions under which migrant domestic workers are entitled to repatriation.

Corresponding National Law or Regulation

As noted above, migrants must comply with the provisions set out by the Immigration Law.

As long as domestic workers are in compliance with Immigration Law requirements concerning visa and employment permits, they are allowed to exit and re-enter the country.

Law or Regulation covering other workers but not domestic workers

The Immigration Law does not explicitly affirm that immigrants are entitled to repatriation, but if there is an employment agreement they have the right of free movement between Italy and their country of origin.

The Immigration Law has adopted the European directive 2004/38/CE and converted it into Law No. 129/2011. This Law provides for a “voluntary and assisted repatriation.” Accordingly, the irregular immigrant has to leave the country between 7 and 30 days according to the particular condition of the case.

According to Italian legislation concerning repatriation of irregular immigrants, an immigrant that has to leave the country has the opportunity to show that he is going to leave the country voluntarily. In this case, the immigrant has between 7 and 30 days to leave the country. These norms do not apply exclusively to domestic workers, but to all irregular immigrants without a regular employment agreement.

Notes/Recommendations/Analysis

Not applicable.

Article 9 ILO Convention Provision

RESIDENCY AND ENTITLEMENTS

1. Free to reach agreement with employer or potential employer on whether to reside in the household.
2. Domestic workers residing in the household are not obliged to remain in the household or with household members during periods of daily and weekly rest or annual leave.
3. Entitled to keep in their possession their travel and identity documents.

Corresponding National Law or Regulation

Both the CCNL and the Domestic Labour Law provide for similar rules.

In particular, Article 6 of the CCNL provides that the employer must inform the domestic worker whether he/she is to live in the household. Freedom of contract applies: both parties, worker and employer, decide the type of agreement to be entered into. Art. 6 lit. d) requires that the employment agreement explicitly describes the type of arrangement (See Art. 1 Comment).

Further, both the Domestic Labour Law and the CCNL provide a general obligation upon the employer to respect the domestic workers' privacy.

Although the Domestic Labour Law does not explicitly cover the issue, domestic workers are entitled to full freedom of movement during their free time, without any requirement to stay within the household.

Employers do not have the right to withhold or retain identity or travel documents of their domestic workers: such an action would be considered illegal.

All individuals have a legal obligation to carry their identity documents with them at all times.

Law or Regulation covering other workers but not domestic workers

Not applicable.

Notes/Recommendations/Analysis

Not applicable.

Article 10

ILO Convention Provision

WORKING TIME

1. Equal treatment between domestic workers and workers in relation to normal hours of work, overtime compensation, periods of daily and weekly rest and paid annual leave.
2. Weekly rest shall be at least 24 consecutive hours.
3. Periods when domestic workers are not free to dispose of their time and remain at the disposal of the employer are regarded as part of the hours of work.

Corresponding National Law or Regulation

Article 7 of the Domestic Labour Law provides that the employee has the right to have a minimum 24 hour rest period per week. Article 14 of the CCNL extends such right to 36 hours, of which 24 hours must be provided on Sundays (or other day agreed by the parties – for example if the religion of the worker provides for a different non-working day).

1. If the employee has to work during his/her free day(s), he/she is entitled to receive overtime pay and to agree with the employer on another free day in substitution of the free day not enjoyed.
2. Under Arts. 11 and 12 of the CCNL, when the domestic worker remains in the household in order to assist employers during the night, the time spent in the household is regarded as working time.

Law or Regulation covering other workers but not domestic workers

Not applicable.

Notes/Recommendations/Analysis

Not applicable.

Article 11

ILO Convention Provision

WAGE

Domestic workers enjoy minimum wage coverage where such coverage exists and without discrimination based on sex.

Corresponding National Law or Regulation

Minimum wage coverage is set out in the CCNL.

There is no distinction based on sex concerning wages.

Moreover, Art. 2 of the Domestic Labour Law establishes that domestic workers may be of both genders.

Law or Regulation covering other workers but not domestic workers

Not applicable.

Notes/Recommendations/Analysis

Not applicable.

Article 12 **ILO Convention Provision**

PAYMENT IN KIND

1. Domestic workers shall be paid directly in cash at regular intervals at least once a month. Unless provided for by national laws, regulations or collective agreements, payment may be made by bank transfer, bank cheque, postal cheque, money order or other lawful means of monetary payment, with the consent of the worker concerned.
2. National laws, regulations, collective agreements or arbitration awards may provide for the payment of a limited proportion of the remuneration of domestic workers in the form of payments in kind that are not less favourable than those generally applicable to other categories of workers, provided that measures are taken to ensure that such payments in kind are agreed to by the worker, are for the personal use and benefit of the worker, and that the monetary value attributed to them is fair and reasonable.

Corresponding National Law or Regulation

Art. 1 of the Domestic Labour Law affirms that workers can be paid with money or in kind. Art. 1197 of The Italian Civil Code defines the general rules for performance other than that which has been contractually agreed by the parties (including, therefore, payment in kind).

Under the CCNL, the employer shall pay the worker periodically, and under the Domestic Labour Law the employer shall pay the worker at least once a month.

The CCNL provides for a table with the amount of (i) minimum wage (in accordance with the type of employment agreement chosen); (ii) salary increases by reason of seniority; and (iii) monetary value attributed to board and lodging.

According to the CCNL, the worker is entitled to receive 13 payments a year.

Law or Regulation covering other workers but not domestic workers

Not applicable.

Notes/Recommendations/Analysis

With reference to payments in kind, we note that Art. 1 of the Domestic Labour Law (whose original version was adopted in 1958) does not provide for any limit for the amount that may be paid in kind. Moreover, the law does not provide for

any indication concerning the necessity of agreement between parties to the employment agreement with regard to the payment in kind. However, under Art. 1197 of the Italian Civil Code, if the employer wants to pay the worker in kind, the payment in kind has to be accepted by the domestic employee.

Currently, we note in any event that CCNL seems to provide only one type of payment in kind, i.e. board and lodging, whose value is determined in annexes attached to the CCNL itself.

Article 13 **ILO Convention Provision**

OCCUPATIONAL SAFETY AND HEALTH

Right to a safe and healthy working environment, ensuring the occupational safety and health of domestic workers.

Corresponding National Law or Regulation

As described above, both the Domestic Labour Law and the CCNL provide that domestic workers shall enjoy a safe and healthy working environment, in order to protect their physical and mental integrity.

Law or Regulation covering other workers but not domestic workers

Not applicable.

Notes/Recommendations/Analysis

Not applicable.

Article 14 **ILO Convention Provision**

SOCIAL SECURITY

Domestic workers enjoy conditions that are not less favourable than those applicable to workers in respect of social security protection, including with respect to maternity.

Corresponding National Law or Regulation

Under Article 28 of the CCNL, domestic workers are subject to the common social security forms provided by Italian laws (the system is organized by the "INPS", the National Social Security Institute).

Moreover, pursuant to Article 48 CCNL, the parties to the CCNL agreed to establish a complementary social security fund for domestic workers. The system established for domestic workers does not differ from other types of complementary social security funds.

Law or Regulation covering other workers but not domestic workers

Please see notes below.

Notes/Recommendations/Analysis

The protection of maternity is particularly controversial under Italian law.

Both the Domestic Labour Law and the CCNL contain certain provisions regarding the protection of maternity, and domestic workers enjoy maternity protection, but only to a certain extent. Given the peculiarity of the domestic work (i.e. the fact that often domestic workers live in the household of the employer), Italian law consents to the exemption of domestic workers from the application of provisions regarding:

- (i) The 6 month parental leave after the birth of the child paid at 30% of the salary;
- (ii) 3 days leave per month to take care of invalid children;
- (iii) 2 paid hours per day for nursing;
- (iv) Exemption from night work for the first year after the child is born;
- (v) Prohibition to dismiss the employee for the first year after the child is born.

Please note that the Italian Supreme Court and Italian Constitutional Court have considered such “discrimination” legitimate under Italian law, as a result of the peculiarities of domestic work.

Domestic workers have the following rights under Art. 24 CCNL:

1. Women cannot be required to work:
 - 2 months before the expected date of delivery;
 - between the expected date and the actual date of delivery;
 - for 3 months after the delivery.

However, these periods will be counted with regards to paid vacations and seniority.

2. Women who become pregnant during the employment relationship cannot be fired unless with “just cause.”

Article 15 ILO Convention Provision

REGULATION OF RECRUITMENT/EMPLOYMENT AGENCIES

Protect domestic workers, including migrant domestic workers, recruited or placed by private employment agencies, from abusive practices.

- (a) Determine conditions governing the operation of private employment agencies;
- (b) Adequate machinery and procedures exist for the investigation of complaints, alleged abuses and fraudulent practices;
- (c) Members, and where appropriate, in collaboration with other members, provide adequate protection for and prevent abuses of domestic workers recruited or placed in their territory by private employment agencies;
- (d) Where workers are recruited to one country for work in another, conclude bilateral, regional or multilateral agreements;
- (e) Fees charged by private employment agencies are not deducted from the remuneration of domestic workers.

Corresponding National Law or Regulation

Italian law generally protects every worker, including domestic workers, from such practices.

There is no specific legislation for domestic workers, but general laws for employment agencies apply. Under Legislative Decree No. 276/2003, employment agencies have to be enrolled in a specific register and authorised by the Labour Ministry. In particular, Art. 11 of the Decree provides that agencies shall not be directly paid by the worker for the services. Finally, the Decree provides for a general principle of non-discrimination in the selection of the workers.

Law or Regulation covering other workers but not domestic workers

Not applicable.

Notes/Recommendations/Analysis

If employment agencies fail to comply with the Decree, Legislative Decree No. 276/2003 provides for criminal and administrative sanctions. In particular, for example, if the agency commits illegal acts related to the exploitation of minors, the legal representative can be sentenced to up to 18 months of imprisonment and required to pay a fine.

Other provisions concern the necessity for agencies to be registered in a ministerial or regional register specifically provided for by the Decree.

Finally, to the extent of our knowledge, the Decree does not provide for any collaboration with other members of the Convention in regard to the constitution of bi- or multilateral agreements for adequate protection.

Article 16 **ILO Convention Provision**

ACCESS TO DISPUTE SETTLEMENT PROCEDURES

Effective access to courts, tribunals or other dispute resolution mechanisms under conditions that are not less favourable than those available to workers generally.

Corresponding National Law or Regulation

Under the Italian Constitution (Article 24), anyone has the right to file a claim with the competent Court in order to protect his/her right and legitimate interests.

The Italian Code of Civil Procedure provides a specific procedure for labour cases, which guarantees the rights of the weaker party (the employee).

Law or Regulation covering other workers but not domestic workers

Not applicable.

Notes/Recommendations/Analysis

Not applicable.

Article 17 **ILO Convention Provision**

LABOR INSPECTION

1. Develop and implement measures for labour inspection, enforcement and penalties.
2. Measures shall specify the conditions under which access to household premises may be granted, having due respect for privacy.

Corresponding National Law or Regulation

Pursuant to Articles 11-14 of the Domestic Labour Law, central and local commissions have been established. The commissions are supervisory and advisory bodies.

From a general standpoint, labour inspections are made by *ad hoc* labour agents, called *ispettori del lavoro*, who are entitled to punish violations of labour laws and to promote dispute resolution between employers and employees.

There are no specific rules regarding the inspections of domestic working areas. However, according to the general rule of Art. 13 Law No. 689/81, inspectors need to have a warrant in case they want to inspect a domicile.

Law or Regulation covering other workers but not domestic workers

Not applicable.

Notes/Recommendations/Analysis

Since the privacy of the private domicile is a constitutional right, the only recommendation would be to increase the powers of the central and local commissions in their supervising powers.

Article 18

ILO Convention Provision

IMPLEMENTATION

Each Member shall implement the provisions of this Convention, in consultation with the most representative employers and workers organizations, through laws and regulations, as well as through collective agreements or additional measures consistent with national practice, by extending or adapting existing measures to cover domestic workers or by developing specific measures for them, as appropriate.

Corresponding National Law or Regulation

Please see notes below.

Law or Regulation covering other workers but not domestic workers

Not applicable.

Notes/Recommendations/Analysis

FINAL REMARKS:

To date, the Convention has not been ratified by the Italian Parliament. Italian unions and NGOs are putting pressure on the Italian Parliament for a quick ratification of the Convention. In the Italian system, a full ratification of the Convention requires the approval of both houses and, subsequently, the signature of the President of the Republic, after which the Convention will enter into force in the Italian legal system. Currently, the process for the formal ratification of the Convention is currently under review by the competent office of the Ministry of Labour, which is also trying to eliminate the abovementioned discriminations on maternity.

We also note that Italian legislation, also in the opinion of relevant employers' and workers' organisations, is more advanced and provides for more rights than those provided by the Convention. In particular, we highlight that such organisations have already sent a positive opinion with which they ask the Parliament and the Government to officially adopt both the Convention and the Recommendation.

However, the peculiarities of domestic work make it difficult for the authorities to monitor the working relationship and the area of illegal work (so called *moonlighting*) is very broad, especially with reference to migrant workers.

To solve such problems, all the actors involved (government, organisations of employers and employees involved, NGOs) should strengthen controls and inspections and duly inform all workers of their rights, especially migrant workers, who for cultural and/or linguistic reasons, are often unaware of such rights.

In any case, from our review of relevant legislation, we can state that Italian law generally is in line with the Convention and the relevant Recommendation and that it provides domestic workers with the main fundamental social rights generally recognised under international law for workers.

TURKEY

Article 1 ILO Convention Provision

DEFINITIONS

For the purpose of the Convention:

- (a) The term “domestic work” means work performed in or for a household or households;
- (b) The term “domestic worker” means any person engaged in domestic work within an employment relationship;
- (c) A person who performs domestic work only occasionally or sporadically and not on an occupational basis is not a domestic worker.

Corresponding National Law or Regulation

There are no national laws or regulations that define “domestic work” or “domestic worker”.

Law or Regulation covering other workers but not domestic workers

Pursuant to Article 2 of the Labor Law numbered 4857 and published in the Official Gazette on June 10, 2003 (the “**Labor Law**”), the term “worker” means any real person engaged in work based on an employment agreement and the relationship between the worker and employer is referred to as the “employment relationship”.

However, Article 4(e) of the Labor Law explicitly excludes domestic work from its scope of application and accordingly, none of the existing provisions of the Labor Law in line with the Convention are applicable to domestic workers.

Pursuant to the decisions of the Turkish High Court of Appeals, workers providing various services in households (e.g. cook, servant, cleaner, housekeeper, chauffeur) are deemed “domestic workers” and the Turkish Code of Obligations numbered 6098 and published in the Official Gazette on February 4, 2011 (the “**Code of Obligations**”), is applicable to the relationships between such domestic workers and their employers. Other than this implementation of the jurisprudence and general provisions of the Code of Obligations, there are no specific sources of legislation under Turkish law governing domestic workers.

Notes/Recommendations/Analysis

Article 4(e) of the Labor Law explicitly excludes domestic work from its scope of application and there is no definition of “domestic work” or “domestic worker” under Turkish legislation.

For the purposes of complying with the Convention, two measures may be suggested:

- (i) inclusion of domestic workers within the scope of the Labor Law by way of an amendment so that domestic workers can benefit from the provisions of the Labor Law comparable to the Convention; and
- (ii) inclusion of clear definitions of “domestic work” and “domestic worker” in line with the Convention within the text of the Labor Law by way of an amendment (via enactment of an amendment law by the Turkish Parliament).

Article 3 ILO Convention Provision

FREEDOM OF ASSOCIATION AND RIGHT TO COLLECTIVE BARGAINING

1. Each member shall take measures to ensure the effective promotion and protection of the human rights of all domestic workers, as set out in this Convention.
2. Promote and realize the fundamental principles and rights at work such as collective bargaining, elimination of all forms of forced or compulsory labour, and abolition of child labour.
3. Protect the right of domestic workers and employers of domestic workers to join organizations, federations and confederations of their own choosing.

Corresponding National Law or Regulation

The Turkish Constitution (the “**Constitution**”), applicable to all individuals, including migrant workers (depending on the nature of each right and specific circumstances of each case), regulates certain rights comparable to Article 3 of the Convention:

- (i) Articles 12–65 of the Constitution regulate the general constitutional rights of all individuals and Article 50 of the Turkish Constitution regulates working conditions;

- (ii) Article 53 of the Constitution regulates collective bargaining and collective employment agreement rights of employees and employers, Article 18 of the Constitution prohibits forced labor for all individuals and Article 50 specifically regulates that no one can be engaged in work that is not suitable for his/her age; and
- (iii) Article 33 of the Constitution regulates the right to establish and join associations whereas Article 51 of the Constitution regulates the right to establish and join trade unions for workers and employers.

The Trade Unions Act numbered 2821 and published in the Official Gazette on May 7, 1983 (the "**Trade Unions Act**") applies to domestic workers who are covered by the social security system regulated under The Law Regarding Social Security and General Health Insurance numbered 5510 and published in the Official Gazette dated June 16, 2006 (the "**Social Security Law**") provided that their work is performed in a constant manner in exchange for remuneration. *(Please refer to our detailed explanations under Article 14 below.)* Migrant workers may also benefit from the Trade Unions Act if they have obtained a valid work permit.

The Collective Bargaining, Strike and Lock-out Law numbered 2822 and published in the Official Gazette on May 7, 1983 (the "**Collective Bargaining Law**") regulates the terms and conditions governing collective bargaining in a detailed manner; however, it applies only to domestic workers who are covered by the social security system regulated under the Social Security Law provided that their work is performed in a constant manner in exchange for remuneration. *(Please refer to our detailed explanations under Article 14 below.)*

Law or Regulation covering other workers but not domestic workers

See Corresponding National Law or Regulation.

Notes/Recommendations/Analysis

Despite the fact that most of the rights in line with the Convention are regulated under the Constitution, details related to most of these rights are provided in the Labor Law, which explicitly excludes domestic workers, and other related primary and secondary legislation does not reference domestic workers.

Moreover, the Trade Unions Act and the Collective Bargaining Law provide detailed provisions with respect to trade unions and collective bargaining rights; however, it is debatable whether these provisions apply to all domestic workers. For the purposes of complying with the Convention, domestic workers should be included within the scope of the Labor Law, Trade Unions Act, Collective Bargaining Law and other related primary and/or secondary legislation by way of amendments (via enactment of an amendment law by the Turkish Parliament).

Article 4 **ILO Convention Provision**

CHILD LABOUR

1. Minimum age of domestic worker is:
 - a. consistent with the provisions of the Minimum Age Convention, 1973 and Worst Forms of Child Labour Convention (1999);
 - b. age of domestic worker should not be lower than that established by national laws and regulations for workers generally.
2. Domestic workers who are under the age of 18 and above the minimum age of employment are not deprived of compulsory schooling, further education or vocational training.

Corresponding National Law or Regulation

Article 50 of the Constitution generally provides that no individual, including non-citizens, can engage in work not suitable for their age; however, the Constitution provides very broad and general rules with no specific reference to a suitable age for domestic work and no exact definition of work unsuitable for children. Neither has such information been provided in court decisions.

Law or Regulation covering other workers but not domestic workers

Pursuant to Article 71 of the Labor Law, which excludes domestic workers, employment of children under the age of fifteen is prohibited. However, children who have turned fourteen and have completed their primary education may be employed in non-heavy labor that will not hinder their physical, mental and moral development, and for those who continue their education, in jobs that will not prevent their schooling.

Article 71 of the Labor Law explicitly states that the work that a child is engaged in shall not prevent schooling, maintenance of vocational training or following-up of classes on a regular basis. The Labor Law is not applicable to domestic workers regardless of whether the worker is a child or an adult.

Pursuant to Article 71, the working hours of children who have completed their basic education, provided that they are over the age of fourteen, but are no longer attending school can total no more than seven hours per day and thirty-five hours per week. However, such working hours may be increased to up to forty hours per week for children who have reached fifteen years of age. Working hours for those who continue their education may total a maximum of 2 hours per day and 10 hours per week.

The Regulation Regarding the Procedure and Principles of Employment of Children and Young Workers published in the Official Gazette dated April 6, 2004 further regulates the issues concerning child employment; however, such regulation is not applicable to domestic workers regardless of whether the worker is a child or an adult.

Notes/Recommendations/Analysis

Despite the fact that rules related to child labor in line with the Convention are regulated under the Labor Law and the relevant secondary legislation, domestic workers are excluded from their scope.

For the purposes of complying with the Convention, domestic workers should be included within the scope of the Labor Law (via enactment of an amendment law by the Turkish Parliament) and other secondary legislation by way of amendments (by the issuance of secondary legislation by the relevant authority, e.g. the Ministry of Labor and Social Security with respect to Labor Law related legislation).

Article 5 ILO Convention Provision

PROTECTION FROM ABUSE, HARASSMENT AND VIOLENCE

Enjoy effective protection against all forms of abuse, harassment and violence.

Corresponding National Law or Regulation

Pursuant to Article 17 of the Constitution, all individuals are entitled to protect and develop their psychological and physical well-being and Article 19 of the Constitution states that all individuals have the right to individual freedom and safety.

The Turkish Penal Code numbered 5237 and published in the Official Gazette on October 12, 2004 (the “**Penal Code**”) sets forth general rules regarding crimes related to various forms of abuse, harassment and violence. Among those general rules, Article 105 of the Penal Code includes a specific reference to employment relationships and states that if sexual harassment is committed by way of benefiting from an employment relationship, the penalty stipulated for such crime shall be aggravated.

Article 417 of the Code of Obligations states that an employer is obliged to protect the personality of the worker and especially to take precautions to avoid the psychological and sexual harassment of the worker.

Law or Regulation covering other workers but not domestic workers

Taking necessary precautions for the protection of physical well-being of workers is one of the obligations of an employer under Article 77 of the Labor Law, which excludes domestic workers.

Moreover, Article 24 of the Labor Law considers sexual harassment as just cause for termination of the employment agreement for those workers covered by such law.

Notes/Recommendations/Analysis

Despite the fact that general provisions of various laws under Turkish legislation provide protection for domestic workers as well, for the purposes of complying with the Convention, domestic workers should be included within the scope of the Labor Law (via enactment of an amendment law by the Turkish Parliament) and other secondary legislation by way of amendments (by the issuance of secondary legislation by the relevant authority, e.g. the Ministry of Labor and Social Security with respect to Labor Law related legislation).

Article 6 ILO Convention Provision

RIGHT TO PRIVACY

Fair terms of employment as well as decent working conditions and, if they reside in the household, decent living conditions that respect their privacy.

Corresponding National Law or Regulation

Article 417 of the Code of Obligations regulates that the employer is obliged to protect the psychological wellbeing of the worker, to provide an appropriate working environment and take all necessary precautions with respect to occupational safety and health.

Also pursuant to Article 418 of the Code of Obligations, the employer is obliged to provide the worker with sufficient accommodation in the event that the worker resides with the employer; however, it is not obligatory for the domestic worker to reside in the household.

Law or Regulation covering other workers but not domestic workers

Article 77 of the Labor Law regulates that the employer is under the obligation to provide all kinds of required health and safety conditions in the work place.

Notes/Recommendations/Analysis

For the purposes of complying with the Convention, the Labor Law and Code of Obligations should be amended (via enactment of an amendment law by the Turkish Parliament) in order to include provisions related to fair terms of employment and domestic workers should be included within the scope of the Labor Law and other secondary legislation by way of amendments (by the issuance of secondary legislation by the relevant authority, e.g. the Ministry of Labor and Social Security with respect to Labor Law related legislation).

Article 7 ILO Convention Provision

TERMS AND CONDITIONS IN EMPLOYMENT CONTRACT

Domestic workers are informed of their terms and conditions of employment in an appropriate, verifiable and easily understandable manner and preferably, where possible, through written contracts.

Corresponding National Law or Regulation

There is no specific regulation with that effect and Article 394 of the Code of Obligations sets forth that no special form (e.g. written) is required for an employment contract to be valid under the Code of Obligations.

Law or Regulation covering other workers but not domestic workers

Pursuant to Article 8 of the Labor Law, an employment agreement is generally not subject to any special requirements (e.g. written) unless the contrary is stipulated by law. As an exception, a written agreement is required only for employment agreements with a fixed duration of one year or more.

In the event that a written agreement is not executed between the worker and the employer, the employer is obliged to provide the worker, within two months at the latest, with a written document describing the general and special conditions of work, daily or weekly working period, basic wage and bonuses, if any, time intervals for remuneration, duration if there is a fixed term employment relationship and conditions concerning termination of the agreement.

Notes/Recommendations/Analysis

Although the Labor Law introduces limited rules with respect to written contracts and employment terms to be included in such written contracts, as domestic workers are not included within the scope of the Labor Law such rules would not be applicable to domestic workers.

In order to extend the Labor Law's implementation in this respect, (i) the Labor Law should be amended to require execution of a written contract for all employment relations, and (ii) domestic workers should be included within the scope of the Labor Law (via enactment of an amendment law by the Turkish Parliament).

As a separate precaution Article 394 of the Code of Obligations should also be amended (via enactment of an amendment law by the Turkish Parliament) in line with the Convention so that domestic workers may benefit from such requirement even if the Labor Law is not amended as suggested above.

Article 8 ILO Convention Provision

MIGRANT DOMESTIC WORKERS

1. National laws and regulations shall require migrant domestic workers who are recruited in one country for domestic work in another receive a written job offer or contract of employment that is enforceable in the country in which the work is to be performed.
2. Laws, regulations, or other measures shall specify the conditions under which migrant domestic workers are entitled to repatriation.

Corresponding National Law or Regulation

Not applicable.

Law or Regulation covering other workers but not domestic workers

Not applicable.

Notes/Recommendations/Analysis

For the purposes of complying with the Convention, the Labor Law, Code of Obligations and Regulation Regarding Work Permits for Foreign Individuals published in the Official Gazette dated August 29, 2003 (the "**Work Permit Regulation**") should be amended in order to include provisions in line with the Convention with respect to migrant domestic workers. Amendment of laws can be achieved by enactment of an amendment law by the Turkish Parliament whereas amendment of regulations require issuance of secondary legislation by the relevant authority, e.g. the Ministry of Labor and Social Security with respect to Labor Law related legislation.

Please note that pursuant to the Work Permit Regulation, all foreign individuals working in Turkey, including domestic workers, must obtain a work permit from the Ministry of Labor.

Article 9 ILO Convention Provision

RESIDENCY AND ENTITLEMENTS

1. Free to reach agreement with employer or potential employer on whether to reside in the household.
2. Domestic workers residing in the household are not obliged to remain in the household or with household members during periods of daily and weekly rest or annual leave.
3. Entitled to keep in their possession their travel and identity documents.

Corresponding National Law or Regulation

Article 23 of the Constitution provides the right to reside and travel for every citizen; therefore, domestic workers cannot be obliged to live in the household or remain in the household or with household members outside of working hours.

Pursuant to Article 418 of the Code of Obligations, the employer is obliged to provide the worker with sufficient accommodation in the event that the worker resides with the employer; however, it is not obligatory for the domestic worker to reside in the household.

There is no specific Turkish legislation with respect to items 2 and 3 of Article 9 of the Convention.

Law or Regulation covering other workers but not domestic workers

Not applicable.

Notes/Recommendations/Analysis

For the purposes of complying with the Convention, the Labor Law and Code of Obligations should be amended in order to include explicit provisions in line with the Convention with respect to residency options (e.g. rules regarding residency of the domestic worker within the household) and entitlements (e.g. vacations and leave, privacy, travel) for domestic workers.

The Labor Law and the Code of Obligations can be amended via enactment of amendment laws by the Turkish Parliament.

Article 10 ILO Convention Provision

WORKING TIME

1. Equal treatment between domestic workers and workers in relation to normal hours of work, overtime compensation, periods of daily and weekly rest and paid annual leave.
2. Weekly rest shall be at least 24 consecutive hours.
3. Periods when domestic workers are not free to dispose of their time and remain at the disposal of the employer are regarded as part of the hours of work.

Corresponding National Law or Regulation

With respect to working hours and overtime work Articles 398, 402, 421 and 422 of the Code of Obligations provide that:

- (i) Overtime work is defined as work conducted outside normal working hours with the consent of the worker, provided that additional remuneration is granted to the worker;
- (ii) For overtime work, the normal working hours' remuneration should be increased at least 50% or instead of such additional remuneration extra free time can be granted to the worker in proportion to the overtime work, provided that the worker's consent is obtained;
- (iii) The employer should grant one whole day of vacation per week to the worker (in principle such vacation is required to be used on Sundays; however, if this is not possible under the circumstances, then any one day of the week may also be granted); and
- (iv) Workers who have completed a minimum of one year of employment should be granted paid annual leave.

There is no specific Turkish legislation with respect to item 3 of Article 10 of the Convention.

Law or Regulation covering other workers but not domestic workers

Despite the fact that there is no explicit legislation stipulating equal treatment between domestic workers and regular workers, Articles 41, 46, 53, 63 and 68 of the Labor Law, which are applicable to workers (excluding domestic workers) with respect to working hours, overtime compensation and periods of vacations, provide that:

- (i) Weekly rest should be at least 24 consecutive hours;

- (ii) Subject to certain exceptions, working hours cannot exceed forty-five hours per week and daily working hours cannot exceed eleven hours in any given day;
- (iii) Overtime work is defined as work exceeding forty-five hours per week with the consent of the worker provided that additional remuneration is granted to the worker;
- (iv) For overtime work, the normal working hours' remuneration should be increased 50% or instead of such additional remuneration extra free time can be granted to the worker in proportion to the overtime work, provided that the worker's consent is obtained; and
- (v) Workers who have completed a minimum of one year of employment should be granted paid annual leave of (a) 14 days for 1 to 5 years of employment, (b) 20 days for 5 to 15 years of employment, and (c) 26 days for more than 15 years of employment.

Notes/Recommendations/Analysis

As mentioned above, even though there are no equal treatment principles between domestic workers and regular workers, the Code of Obligations and Labor Law include substantially similar provisions although the Labor Law and its secondary legislation provide more detailed rules.

It is possible to conclude that the aforementioned regulations of Turkish law with respect to working hours are generally in line with the Convention. Yet, in order to increase the level of compliance with the Convention, both the Code of Obligations and Labor Law should further be amended via enactment of an amendment law by the Turkish Parliament.

Article 11 ILO Convention Provision

WAGE

Domestic workers enjoy minimum wage coverage where such coverage exists and without discrimination based on sex.

Corresponding National Law or Regulation

Article 10 of the Constitution sets forth that no individual can be discriminated against based on language, race, sex, political opinion, philosophical belief, religion and similar reasons.

Article 39 of the Labor Law specifically regulates that all workers working under an employment agreement, including those which are excluded from the scope of the Labor Law (e.g. domestic workers), should enjoy minimum wage coverage.

Article 401 of the Code of Obligations also provides that each worker is entitled to (i) the wage agreed by the parties under the employment agreement or collective bargaining agreement, or (ii) minimum wage coverage, if the amount of remuneration is not agreed upon by the parties.

Law or Regulation covering other workers but not domestic workers

Article 5 of the Labor Law states that workers cannot be discriminated upon based on their language, race, sex, political opinion, philosophical belief, religion and similar reasons.

Notes/Recommendations/Analysis

The Code of Obligations and Labor Law may be deemed in compliance with the Convention with respect to minimum wage coverage and discrimination in employment relationships.

Article 12 ILO Convention Provision

PAYMENT IN KIND

1. Domestic workers shall be paid directly in cash at regular intervals at least once a month. Unless provided for by national laws, regulations or collective agreements, payment may be made by bank transfer, bank cheque, postal cheque, money order or other lawful means of monetary payment, with the consent of the worker concerned.
2. National laws, regulations, collective agreements or arbitration awards may provide for the payment of a limited proportion of the remuneration of domestic workers in the form of payments in kind that are not less favourable than those generally applicable to other categories of workers, provided that measures are taken to ensure that such payments in kind are agreed to by the worker, are for the personal use and benefit of the worker, and that the monetary value attributed to them is fair and reasonable.

Corresponding National Law or Regulation

Not applicable.

Law or Regulation covering other workers but not domestic workers

Article 32 of the Labor Law regulates that the payments shall be made in cash at least once a month and there is no reference to payments in kind. Moreover, it is prohibited to make payments in the form of promissory notes, vouchers or coupons, or in any other form alleged to represent legal tender.

Notes/Recommendations/Analysis

Payment of a limited proportion of the remuneration in kind is not regulated under Turkish legislation with respect to employment relationships. Additionally, the Code of Obligations does not include any explicit provisions with respect to payment of domestic workers. Therefore, both the Code of Obligations and Labor Law should be amended (via enactment of an amendment law by the Turkish Parliament) in line with the Convention to provide payment details and that such payment option, if agreed to by the worker, is fair and reasonable.

Article 13 ILO Convention Provision

OCCUPATIONAL SAFETY AND HEALTH

Right to a safe and healthy working environment, ensuring the occupational safety and health of domestic workers.

Corresponding National Law or Regulation

Article 417 of the Code of Obligations regulates that the employer is obliged to protect the psychological well-being of the worker, to provide an appropriate working environment and take all necessary precautions with respect to occupational safety and health.

Law or Regulation covering other workers but not domestic workers

Article 77 of the Labor Law regulates that the employer is under the obligation to provide all kinds of required health and safety conditions in the work place.

Notes/Recommendations/Analysis

The Code of Obligations and the Labor Law include substantially similar provisions although the Labor Law and its secondary legislation provide more detailed rules with respect to occupational safety and health.

It is possible to conclude that the aforementioned regulations of Turkish law with respect to occupational safety and health are generally in line with the Convention. Yet, in order to increase the level of compliance with the Convention, both the Code of Obligations and Labor Law should be further amended (via enactment

of an amendment law by the Turkish Parliament) to include explicit references to domestic workers and implementation of such provisions by employers should be more strictly monitored and enforced by governmental authorities.

Article 14 **ILO Convention Provision**

SOCIAL SECURITY

Domestic workers enjoy conditions that are not less favourable than those applicable to workers in respect of social security protection, including with respect to maternity.

Corresponding National Law or Regulation

The Code of Obligations does not include detailed regulations with respect to social security except Article 418, which provides that:

- (i) If the worker cannot perform his/her duties due to reasons such as health problems or accidents, the employer should provide treatment for the worker between 2-4 weeks depending on the length of the employment relationship if the worker cannot benefit from social security coverage, and
- (ii) The obligations of the employer explained in (i) above are also applicable in the event that the worker is pregnant.

Law or Regulation covering other workers but not domestic workers

The Social Security Law explicitly sets forth that domestic workers are not covered by social security insurance unless they are constantly employed in exchange for remuneration. Interpretation of “constant employment” is vague and most domestic workers who work for different employers on a non-regular basis do not fall within the scope of the social security requirements. The dominant scholarly view is that employment of a worker for at least 30 days should be deemed “constant employment”. In this case, a cook, nanny, cleaner, etc. who works permanently for one household for more than 30 days is required to be insured under the Social Security Law. This is a controversial issue under Turkish law and interpretation of this “constant employment” term affects applicability of the Trade Unions Act and Collective Bargaining Law to domestic workers.

Moreover, Article 74 of the Labor Law provides specific rules for maternity periods which are only applicable to workers covered by the Labor Law.

Notes/Recommendations/Analysis

Domestic workers are not covered by the social security system in Turkey unless they work constantly in exchange for remuneration; therefore, domestic workers do not enjoy the legal protection provided to other categories of workers unless such workers pay their social security premiums on their own.

Social security coverage of domestic workers has become a controversial issue in Turkey in the last couple of years due to publicity campaigns conducted by the domestic workers' trade union which was officially established in 2012.

The Social Security Law should be amended (via enactment of an amendment law by the Turkish Parliament) in order to explicitly include domestic workers within the scope of the social security benefits and further clarify how domestic workers and "constant employment" are defined.

Article 15 ILO Convention Provision

REGULATION OF RECRUITMENT/EMPLOYMENT AGENCIES

Protect domestic workers, including migrant domestic workers, recruited or placed by private employment agencies, from abusive practices.

- (a) Determine conditions governing the operation of private employment agencies;
- (b) Adequate machinery and procedures exist for the investigation of complaints, alleged abuses and fraudulent practices;
- (c) Members, and where appropriate, in collaboration with other members, provide adequate protection for and prevent abuses of domestic workers recruited or placed in their territory by private employment agencies;
- (d) Where workers are recruited to one country for work in another, conclude bilateral, regional or multilateral agreements;
- (e) Fees charged by private employment agencies are not deducted from the remuneration of domestic workers.

Corresponding National Law or Regulation

Not applicable.

Law or Regulation covering other workers but not domestic workers

Article 90 of the Labor Law regulates that the Turkish Employment Authority and other authorised private employment agencies are entitled to assist those who are looking for jobs.

Moreover, pursuant to the Private Employment Agencies Regulation published in the Official Gazette dated February 19, 2004 (the “**Agency Regulation**”), such agencies are entitled to act as mediators between foreign workers and Turkish employers as well.

The Agency Regulation includes provisions in line with Article 15 of the Convention regarding only those conditions governing the operation of private employment agencies and adequate machinery required for such agencies.

Notes/Recommendations/Analysis

There is no detailed regulation under Turkish legislation with respect to recruitment of domestic workers through employment agencies and similar relevant issues addressed in Article 15 of the Convention. Therefore, the Code of Obligations, Labor Law and Agency Regulation should be amended in line with the Convention to provide detailed mechanisms for recruitment of domestic workers.

Amendment of laws can be achieved by enactment of an amendment law by the Turkish Parliament whereas amendment of regulations require issuance of secondary legislation by the relevant authority, e.g. the Ministry of Labor and Social Security with respect to Labor Law related legislation.

Article 16

ILO Convention Provision

ACCESS TO DISPUTE SETTLEMENT PROCEDURES

Effective access to courts, tribunals or other dispute resolution mechanisms under conditions that are not less favourable than those available to workers generally.

Corresponding National Law or Regulation

Domestic workers subject to the Code of Obligations are entitled to access civil and criminal courts, tribunals or other dispute resolution mechanisms under general principles of Turkish law. There is no regulation governing specific issues which may arise from the employment relationships of domestic workers.

Since domestic workers are excluded from the scope of the Labor Law, they are not entitled to initiate proceedings or lawsuits before the specialized labor courts.

Law or Regulation covering other workers but not domestic workers

Disputes arising from the employment relationships of workers falling within the scope of the Labor Law are required to be settled by special labor courts.

Since domestic workers are excluded from the scope of the Labor Law, they are not entitled to initiate proceedings or lawsuits before the specialized labor courts.

Notes/Recommendations/Analysis

Under Turkish Law, domestic workers are entitled to access dispute settlement procedures in accordance with generally applicable laws which do not set forth any specific arrangement for domestic workers. However, domestic workers cannot access the special labor courts which have exclusive jurisdiction over Labor Law issues.

For the purposes of complying with the Convention, the Labor Law should be amended (via enactment of an amendment law by the Turkish Parliament) in order to include domestic workers within the scope of the Labor Law which would enable them to initiate lawsuits or proceedings before special labor courts.

Article 17 ILO Convention Provision

LABOR INSPECTION

1. Develop and implement measures for labour inspection, enforcement and penalties.
2. Measures shall specify the conditions under which access to household premises may be granted, having due respect for privacy.

Corresponding National Law or Regulation

Not applicable.

Law or Regulation covering other workers but not domestic workers

Article 91 of the Labor Law sets forth that the Government is responsible for the supervision and inspection of the implementation of the Labor Law and relevant secondary legislation. Officials from the Ministry of Labor and Social Security are entitled to conduct all types of inspections including inspections of private employers/households.

Notes/Recommendations/Analysis

As domestic work is not included within the scope of the Labor Law, in principle domestic workers are not subject to any inspection mechanism. However, inspectors from the Ministry of Labor may conduct inspections with respect to domestic workers as well if they find recruitment of a domestic worker non-compliant with any relevant employment and social security legislation (to the extent applicable).

For the purposes of complying with the Convention, the Labor Law should be amended (via enactment of an amendment law by the Turkish Parliament) in order to include domestic workers within the scope of the Labor Law, which would enable them to be covered by the inspection mechanism.

Article 18 ILO Convention Provision

IMPLEMENTATION

Each Member shall implement the provisions of this Convention, in consultation with the most representative employers and workers organizations, through laws and regulations, as well as through collective agreements or additional measures consistent with national practice, by extending or adapting existing measures to cover domestic workers or by developing specific measures for them, as appropriate.

Corresponding National Law or Regulation

Not applicable.

Law or Regulation covering other workers but not domestic workers

Not applicable.

Notes/Recommendations/Analysis

Turkey is not a party to the the Convention as of the date of this study. In the event that the Convention is ratified by the Turkish Parliament, as explained above, the Labor Law should be amended (via enactment of an amendment law by the Turkish Parliament) in order to remove the specific exclusion of domestic workers from the scope of the Labor Law and other relevant secondary legislation.

In addition to removal of the exclusion regarding domestic workers from the Labor Law, in terms of compliance with the Convention it would also be helpful to enact a specific secondary regulation governing the rules to be applied to domestic workers in order to implement the provisions of the Convention. Such regulation would be expected to be enacted by the Ministry of Labor and Social

Security provided that there is a legal ground for such regulation in any of the codes in force.

The Labor Law and the Code of Obligations can be amended by enactment of amendment laws by the Turkish Parliament and all other secondary legislation can be amended by the issuance of secondary legislation by the relevant authority (e.g. the Ministry of Labor and Social Security with respect to Labor Law related legislation).

SINGAPORE

Article 1 ILO Convention Provision

DEFINITIONS

For the purpose of the Convention:

- (a) The term “domestic work” means work performed in or for a household or households;
- (b) The term “domestic worker” means any person engaged in domestic work within an employment relationship;
- (c) A person who performs domestic work only occasionally or sporadically and not on an occupational basis is not a domestic worker.

Corresponding National Law or Regulation

MINISTRY OF MANPOWER (“MOM”) GUIDELINES A Foreign Domestic Worker (“FDW”) is a domestic worker employed from an approved country (Malaysia, Philippines, Indonesia, Thailand, Myanmar, Sri Lanka, India and Bangladesh).

EMPLOYMENT OF FOREIGN MANPOWER ACT (“EFMA”) “domestic worker” means “a work permit holder employed in or in connection with the domestic services of any private premises”.

WORKPLACE SAFETY AND HEALTH (INCIDENT REPORTING) REGULATIONS

“domestic worker” means “any person employed in or in connection with the domestic services of any private premises”.

Law or Regulation covering other workers but not domestic workers

THE EMPLOYMENT ACT 2009 (THE “EMPLOYMENT ACT”) S.2

“‘employee’ means a person who has entered into or works under a contract of service with an employer...but does not include

- a. any seaman;
- b. any domestic worker...”

“‘domestic worker’ means any house, stable or garden servant or motor car driver, employed in or in connection with the domestic services of any private premises.”

MOM GUIDELINES MOM domestic worker guidelines apply to FDWs only.

Notes/Recommendations/Analysis

RECOMMENDATIONS In order to comply with the Convention:

- (i) domestic workers should be included within the definition of 'employee' and thus be brought within the protections established by the Employment Act; or
- (ii) equivalent protections to those under the Employment Act should be made available to domestic workers under separate legislation.

Article 3 ILO Convention Provision

FREEDOM OF ASSOCIATION AND RIGHT TO COLLECTIVE BARGAINING

1. Each member shall take measures to ensure the effective promotion and protection of the human rights of all domestic workers, as set out in this Convention.
2. Promote and realize the fundamental principles and rights at work such as collective bargaining, elimination of all forms of forced or compulsory labour, and abolition of child labour.
3. Protect the right of domestic workers and employers of domestic workers to join organizations, federations and confederations of their own choosing.

Corresponding National Law or Regulation

CONSTITUTION OF SINGAPORE

ARTICLE 10 prohibits slavery and all forms of forced labour. National service and labour attaching to a prison sentence are not considered forced labour.

ARTICLE 14 provides the right to form associations and to assemble peaceably. This right is subject to the ability of Parliament to impose restrictions necessary and expedient for public order and morality.

INDUSTRIAL RELATIONS ACT, S.25

The right to collective bargaining is recognised.

Collective agreements must be certified by the tripartite Industrial Arbitration Court ("IAC"). The IAC can refuse certification on grounds of public interest, although it has never done so. Union members do not have the power to accept or reject collective agreements negotiated on their behalf.

TRADE UNIONS ACT, SS.12, 14 & 15

The Registrar has extensive powers to refuse to register a union or cancel

registration, and may decide whether to approve a new union's rules or changes to an existing union's rules.

Any group of 7 or more prospective members can form a union. However, regulations stipulate that the governing bodies of associations/unions should have Singapore citizens as the majority, making a domestic workers union challenging.

Foreigners are prohibited from forming their own unions.

Law or Regulation covering other workers but not domestic workers

THE EMPLOYMENT ACT S.17 Contracts of service cannot restrict the right of any Employee to join or participate in the activities of a registered trade union or associate with any other persons for the purpose of organising a trade union.

Notes/Recommendations/Analysis

COMPLIANCE Non-compliant.

In practice trade unions and collective bargaining are highly regulated, and foreign workers are unable to form their own unions.

RECOMMENDATIONS In order to comply with Article 3 of the Convention Singapore should:

- (i) reduce the controls that the courts and registrar have over the decisions and activities of the unions; and
- (ii) amend the Employment Act to cover domestic workers so that their right to join and participate in activities of a registered trade union are also recognised.

Article 4 ILO Convention Provision

CHILD LABOUR

1. Minimum age of domestic worker is:
 - a. consistent with the provisions of the Minimum Age Convention, 1973 and Worst Forms of Child Labour Convention (1999);
 - b. age of domestic worker should not be lower than that established by national laws and regulations for workers generally.
2. Domestic workers who are under the age of 18 and above the minimum age of employment are not deprived of compulsory schooling, further education or vocational training.

Corresponding National Law or Regulation

THE EMPLOYMENT OF FOREIGN MANPOWER (WORK PASSES) REGULATIONS (THE "EFMA REGULATIONS") The minimum age for a FDW is 23 years old if applying for the first time. A person who has previously worked in Singapore in another profession may apply to be a FDW from the age of 18 years old.

An FDW must have a minimum eight years of formal education.

Law or Regulation covering other workers but not domestic workers

THE EMPLOYMENT ACT, PART VIII The minimum age for employment is 15 years old. The Act stipulates that every employer shall prepare and keep a register of each employee including underage workers.

Notes/Recommendations/Analysis

COMPLIANCE Compliant for FDW. There is no mention in any legislation of domestic workers from non-approved countries or local domestic workers. Legislation could be extended to cover these groups as well.

Article 5 ILO Convention Provision

PROTECTION FROM ABUSE, HARASSMENT AND VIOLENCE

Enjoy effective protection against all forms of abuse, harassment and violence.

Corresponding National Law or Regulation

EFMA REGULATIONS

(10) "The employer shall not ill-treat foreign employees, and shall not cause or knowingly permit foreign employees to be ill-treated by any other person. Ill-treatment of a foreign employee is characterised as physical or sexual abuse, criminal intimidation, neglect or requiring the employee to do or be in a situation which is likely to cause injury to the health or safety of the foreign employee".

The term "ill treatment" is clarified in the amendments to the regulations which are effective as of 1 February 2013.

MISCELLANEOUS OFFENCES (PUBLIC ORDER AND NUISANCE) ACT S. 13A

It is an offence to cause "'harassment, alarm or distress to another person' through the use of 'threatening, abusive or insulting words or behaviour' or display of 'any writing, sign or other visible representation which is threatening, abusive or insulting'".

THE PENAL CODE

Domestic violence and sexual or physical harassment are prohibited. The Penal Code applies to all persons in Singapore, whether citizens, residents, or visitors.

S.72 of the Penal Code of Singapore provides for specific offences against the integrity of domestic workers, such as causing hurt or grievous hurt, wrongful confinement, assault or using criminal force, or acts intended to insult the worker's modesty.

Employers of domestic maids (regardless of whether they are local or foreign) and members of the employer's household who commit specified offenses against domestic maids will be liable to be punished with one and a half times the amount to which they would have otherwise been liable for those specified offenses against someone other than a domestic worker.

Law or Regulation covering other workers but not domestic workers

Not applicable.

Notes/Recommendations/Analysis

COMPLIANCE Partially compliant.

RECOMMENDATIONS In order to fully comply with the Convention, Singapore should:

- (i) extend current legislation to clearly prohibit all abuse; and
- (ii) work towards more frequent and effective enforcement of current legislation.

Article 6 ILO Convention Provision

RIGHT TO PRIVACY

Fair terms of employment as well as decent working conditions and, if they reside in the household, decent living conditions that respect their privacy.

Corresponding National Law or Regulation

EFMA REGULATIONS

(PARAGRAPH 4, PART 1, SCHEDULE 1)

"An employer shall provide safe working conditions and acceptable accommodation for the foreign employee, which is consistent with any written legislation or similar instruments issued by the Singaporean government."

Amendments, effective 1 February 2013, clarify the meaning of "safe working conditions" and "acceptable accommodation". Please note that the EFMA Regulations apply to FDWs only.

Law or Regulation covering other workers but not domestic workers

MOM GUIDELINES Discuss what is meant by 'acceptable accommodation'.

Please note that this is not enforceable and also does not relate to local domestic workers.

Notes/Recommendations/Analysis

COMPLIANCE Non-compliant.

RECOMMENDATIONS In order to fully comply with the Convention, Singapore should pass legislation similar to the EFMA that applies to local domestic workers.

Article 7 ILO Convention Provision**TERMS AND CONDITIONS IN EMPLOYMENT CONTRACT**

Domestic workers are informed of their terms and conditions of employment in an appropriate, verifiable and easily understandable manner and preferably, where possible, through written contracts.

Corresponding National Law or Regulation

There is no legal requirement for written contracts or agreed terms of employment.

MOM GUIDELINES Employers are recommended to have written contracts for FDWs.

Law or Regulation covering other workers but not domestic workers**EMPLOYMENT ACT**

There is no requirement under the Act for contracts of employment to be in writing. However, the Act does contain provisions regulating certain of those terms and conditions of employment specified in the Convention. Where applicable, these have been separately addressed in this table.

Notes/Recommendations/Analysis

COMPLIANCE Non-compliant.

RECOMMENDATIONS In order to fully comply with the Convention, Singapore should:

- (i) pass legislation which requires employers to agree written contracts with their domestic worker employees prior to commencement of employment; and
- (ii) specify key terms which must be covered including salary, payment schedule, benefits, hours of work and rest days.

Article 8 ILO Convention Provision

MIGRANT DOMESTIC WORKERS

1. National laws and regulations shall require migrant domestic workers who are recruited in one country for domestic work in another receive a written job offer or contract of employment that is enforceable in the country in which the work is to be performed.
2. Laws, regulations, or other measures shall specify the conditions under which migrant domestic workers are entitled to repatriation.

Corresponding National Law or Regulation

ARTICLE 8, S. 1 (SEE ARTICLE 7 ABOVE)

EFMA REGULATIONS (PARAGRAPHS 14 TO 19) The employer is under a duty to repatriate the FDW if work permits are cancelled for various specific reasons including termination of employment contract.

Law or Regulation covering other workers but not domestic workers

Not applicable.

Notes/Recommendations/Analysis

COMPLIANCE

1. See Article 7.
2. Compliant for FDW from approved countries (Malaysia, Philippines, Indonesia, Thailand, Myanmar, Sri Lanka, India and Bangladesh) only.
3. Legislation should be passed which recognises the rights of domestic workers from non-approved countries or the legislation should be amended to include provision for these workers or the distinction/ requirement of an approved country should be removed all together.

Article 9 ILO Convention Provision

RESIDENCY AND ENTITLEMENTS

1. Free to reach agreement with employer or potential employer on whether to reside in the household.
2. Domestic workers residing in the household are not obliged to remain in the household or with household members during periods of daily and weekly rest or annual leave.
3. Entitled to keep in their possession their travel and identity documents.

Corresponding National Law or Regulation

EFMA REGULATIONS (PARAGRAPH 3 & 5) FDWs are required to reside at the employer's residential address that is stated in their work permit. Employers are under an obligation to make sure that FDWs are resident at the address on the permit.

ARTICLE 9, S. 2 See analysis of Article 10 of the Convention below.

EFMA REGULATIONS (PARAGRAPH 24) Workers are entitled to keep in their possession their work permit and visit pass, but we note that the provision does not mention workers' passports.

Law or Regulation covering other workers but not domestic workers

Not applicable.

Notes/Recommendations/Analysis

COMPLIANCE

1. Non-compliant.
2. Please see analysis of Article 10.
3. Partially compliant.

We note that the EFMA does not apply to local domestic workers, only FDWs.

RECOMMENDATIONS In order to comply with the Convention:

- (i) the EFMA Regulations should be amended to give FDWs the option to reside at the address of their employer or externally;
- (ii) paragraph 24 of the EFMA Regulations should be extended to include primary travel documents; and
- (iii) the relevant provisions of the EFMA Regulations should also be made available to local domestic workers.

Article 10 ILO Convention Provision

WORKING TIME

1. Equal treatment between domestic workers and workers in relation to normal hours of work, overtime compensation, periods of daily and weekly rest and paid annual leave.
2. Weekly rest shall be at least 24 consecutive hours.
3. Periods when domestic workers are not free to dispose of their time and remain at the disposal of the employer are regarded as part of the hours of work.

Corresponding National Law or Regulation

1. No equivalent legislation.
2. Amendment to Employment of Foreign Manpower (Work Passes) Regulations. FDWs working under a permit issued or renewed on/ after 1 February 2013 will be entitled to one rest day every week or compensation of one day's wage in addition to their monthly salary if agreed by the domestic worker.
3. No equivalent legislation.

Law or Regulation covering other workers but not domestic workers

EMPLOYMENT ACT, SS. 33 TO 55 Normal hours of work, rest periods, overtime compensation, rest days and paid annual leave, are set out for Employees.

Notes/Recommendations/Analysis

COMPLIANCE

1. Non-compliant.
2. Compliant as of 1 February 2013 for FDWs only
3. Non-compliant.

RECOMMENDATIONS

In order to comply with the Convention:

- (i) protection should be extended to domestic workers from non-approved countries;
- (ii) domestic workers should be included within the definition of 'employee' and thus be brought within the protections established by the Employment Act;
- (iii) equivalent protections to those under the Employment Act should be made available to domestic workers under separate legislation; and
- (iv) legislation should include a provision so that when domestic workers are not free to dispose of their time and remain at the disposal of their employer, it is regarded as part of the hours of work.

Article 11 ILO Convention Provision

WAGE

Domestic workers enjoy minimum wage coverage where such coverage exists and without discrimination based on sex.

Corresponding National Law or Regulation

No equivalent legislation.

Law or Regulation covering other workers but not domestic workers

There is no minimum wage/salary in Singapore.

Notes/Recommendations/Analysis

COMPLIANCE As there is no minimum wage in Singapore, the question of applicability to domestic workers does not arise.

RECOMMENDATIONS In order to comply with the Convention legislation prohibiting wage discrimination based on sex should be passed.

Article 12

ILO Convention Provision

PAYMENT IN KIND

1. Domestic workers shall be paid directly in cash at regular intervals at least once a month. Unless provided for by national laws, regulations or collective agreements, payment may be made by bank transfer, bank cheque, postal cheque, money order or other lawful means of monetary payment, with the consent of the worker concerned.
2. National laws, regulations, collective agreements or arbitration awards may provide for the payment of a limited proportion of the remuneration of domestic workers in the form of payments in kind that are not less favourable than those generally applicable to other categories of workers, provided that measures are taken to ensure that such payments in kind are agreed to by the worker, are for the personal use and benefit of the worker, and that the monetary value attributed to them is fair and reasonable.

Corresponding National Law or Regulation

MOM GUIDELINES

1. MOM guidelines for payment of FDW's salaries are in line with the provisions of the Convention. Also see guidelines on the MOM website, which state that a FDW must be paid due salary each month, no later than 7 days after the last day of the salary period. The salary period agreed between the employer and worker shall also not exceed one month.

2. Employers are responsible for FDW's medical needs, and must provide medical insurance and personal accident insurance. The guidelines on the MOM website also state that the employer should consider giving the FDW a periodic wage adjustment to reward good performance and loyalty.

Law or Regulation covering other workers but not domestic workers

EMPLOYMENT ACT, SS. 20-22 Wages must be paid in fixed payment periods, certain deductions from wages are allowable and such deductions capped at 50% of the total salary.

Notes/Recommendations/Analysis

COMPLIANCE Non-compliant.

The MOM Guidelines are compliant with the Convention, but are not legally enforceable and only cover FDWs.

RECOMMENDATIONS In order to comply with the Convention:

- (i) domestic workers should be included within the definition of 'employee' and thus be brought within the protections established by the Employment Act; or
- (ii) equivalent protections to those under the Employment Act should be made available to domestic workers under separate legislation.

Article 13 ILO Convention Provision

OCCUPATIONAL SAFETY AND HEALTH

Right to a safe and healthy working environment, ensuring the occupational safety and health of domestic workers.

Corresponding National Law or Regulation

EFMA REGULATIONS The employer of a domestic worker is required to provide acceptable accommodation, a safe working environment, purchase a minimum S\$10,000 personal injury insurance policy, and the "employer shall ensure that the worker is not ill-treated, exploited, wilfully neglected or endangered".

These provisions are not as comprehensive as those in the Employment Act and only cover foreign domestic workers.

Law or Regulation covering other workers but not domestic workers

THE WORKPLACE SAFETY AND HEALTH ACT (CHAPTER 354A, SECTIONS 27 AND 65) AND THE WORKPLACE SAFETY AND HEALTH (INCIDENT REPORTING) REGULATIONS

These regulations apply to every workplace, but do not cover accidents sustained by a person in the course of his work as a domestic worker. The

employer has the duty to report accidents and occupational diseases to the Commissioner, and keep records of all such reports.

THE WORKMEN'S COMPENSATION ACT This legislates for compensation for workplace injuries and occupational illnesses. Domestic workers are excluded.

THE WORK INJURY COMPENSATION ACT ('WICA')

This regulates employee compensation for workplace injuries.

Employees have the right to claim for medical expenses incurred following a workplace accident, for permanent incapacity, death and for medical leave wages under WICA. Domestic workers are specifically excluded.

WORKPLACE SAFETY AND HEALTH COUNCIL The council comprises industry leaders, the government, unions and professionals from the legal, insurance and academic fields. Under the Council, seven industry committees, two taskforces and two workgroups have been formed. There is no committee overseeing domestic workers workgroups have been formed.

Notes/Recommendations/Analysis

COMPLIANCE Compliant.

RECOMMENDATIONS Although compliant on a basic level, in order to improve the protection of domestic workers Singapore should:

- (i) extend the reach of existing legislation and regulations applicable to other workers, to also cover domestic workers; and
- (ii) form a committee under the Workplace Safety and Health Council to oversee domestic workers.

Article 14 ILO Convention Provision

SOCIAL SECURITY

Domestic workers enjoy conditions that are not less favourable than those applicable to workers in respect of social security protection, including with respect to maternity.

Corresponding National Law or Regulation

CENTRAL PROVIDENT FUND ACT (CH. 36) To enable Singaporeans and Permanent Residents ("PR"s) to set aside sufficient funds for their retirement, the Central Provident Fund ("CPF") - a social security savings plan for citizens and PRs was set up under the Employment Act and covers domestic workers (including migrant workers). CPF accounts are funded by both employee and employer contributions.

CHILD DEVELOPMENT CO-SAVINGS ACT (CHAPTER 38A) Under the Child Development Co-Savings Act, an employee is entitled to 16 weeks of paid maternity leave if the child is a Singapore Citizen, the child's parents are lawfully married and the employee has served the employer for at least 90 days before the child's birth.

THE RETIREMENT AND RE-EMPLOYMENT ACT

An employee has no right to retrenchment benefits unless his/her employment contract or an applicable collective arrangement so provides.

The legislation listed above covers all employees who are Singapore citizens and Permanent Residents.

Law or Regulation covering other workers but not domestic workers

EMPLOYMENT ACT Employees who are covered under the Act will be entitled to

- (i) 12 weeks of maternity leave. The employee must have worked for at least 180 days before delivery of the child. The employee is only entitled to full pay during maternity leave for the first two children.
- (ii) retrenchment benefits if employed for more than 3 years.

Notes/Recommendations/Analysis

COMPLIANCE Partially compliant. Singapore does not currently comply with Article 14 of the Convention because domestic workers are excluded from the Employment Act.

RECOMMENDATIONS In order to comply with the Convention:

- (i) current legislation and regulation affecting Singaporean citizens and PRs should be extended to also apply to foreign workers; and
- (ii) domestic workers should be included within the definition of 'employee' under the Employment Act; or
- (iii) equivalent protections to those under the Employment Act should be made available to domestic workers under separate legislation.

Article 15 ILO Convention Provision

REGULATION OF RECRUITMENT/EMPLOYMENT AGENCIES

Protect domestic workers, including migrant domestic workers, recruited or placed by private employment agencies, from abusive practices.

- (a) Determine conditions governing the operation of private employment agencies;

- (b) Adequate machinery and procedures exist for the investigation of complaints, alleged abuses and fraudulent practices;
- (c) Members, and where appropriate, in collaboration with other members, provide adequate protection for and prevent abuses of domestic workers recruited or placed in their territory by private employment agencies;
- (d) Where workers are recruited to one country for work in another, conclude bilateral, regional or multilateral agreements;
- (e) Fees charged by private employment agencies are not deducted from the remuneration of domestic workers.

Corresponding National Law or Regulation

EFMA AND EFMA REGULATIONS

It is a requirement for all foreign workers to obtain a work permit to enable them to work in Singapore. The employer of an FDW is responsible for obtaining a work permit for the FDW and for ensuring that the FDW resides at the residence indicated on the permit.

There is no requirement for a contract of employment to be written or for certain terms to be included in it – the form and content of the employment agreement are to be agreed between the employer and employee.

There is no legislation regulating the recruitment of foreign workers or their fees.

Law or Regulation covering other workers but not domestic workers

There is no equivalent law or regulation.

Notes/Recommendations/Analysis

COMPLIANCE Non-compliant.

RECOMMENDATIONS We note further, that the majority of legislation and guidelines in Singapore relate only to FDWs rather than local domestic workers, indicating that measures are taken to protect migrant workers from approved countries only.

In order to comply with the Convention:

- (i) equivalent legislation to EFMA and EFMA Regulations should be enacted with respect to local domestic workers; and
- (ii) new legislation which seeks to implement a requirement to have a written contract between a domestic worker and his or her employer should be passed.

Article 16 ILO Convention Provision

ACCESS TO DISPUTE SETTLEMENT PROCEDURES

Effective access to courts, tribunals or other dispute resolution mechanisms under conditions that are not less favourable than those available to workers generally.

Corresponding National Law or Regulation

MOM The MOM, through various press releases and circulars, have made clear that if a complaint is made by a FDW, the allegations will be taken seriously and while being investigated, the employer will be prevented from employing a new domestic worker. The EFMA is unclear as to what the penalties are if the employer is found guilty.

A FDW can lodge a complaint or file a claim with MOM and the MOM will contact the employer and arrange a meeting to resolve the dispute.

Law or Regulation covering other workers but not domestic workers

EMPLOYMENT ACT, SS.103 AND 115 The Act provides for disputes between employers and employees to be investigated and determined by the commissioner (see Article 17, below).

Notes/Recommendations/Analysis

COMPLIANCE Non-compliant.

RECOMMENDATIONS In order to comply with the Convention:

- (i) domestic workers should be included within the definition of 'employee' and thus be brought within the protections established by the Employment Act; or
- (ii) equivalent protections to those under the Employment Act should be made available to domestic workers under separate legislation.

Article 17 ILO Convention Provision

LABOR INSPECTION

1. Develop and implement measures for labour inspection, enforcement and penalties.
2. Measures shall specify the conditions under which access to household premises may be granted, having due respect for privacy.

Corresponding National Law or Regulation

There is no equivalent law or regulation.

However, there are mechanisms provided by law which implicitly provide for labour inspection and enforcement/penalties in the event of any violations of domestic worker safety provisions. EFMA Regulations require employers to provide safe working conditions for FDWs.

Law or Regulation covering other workers but not domestic workers

EMPLOYMENT ACT, SS.103 AND 115 Commissioners and inspecting officers have extensive powers of investigation, including the power to enter and search any premises to obtain evidence of the commission of an offence; to question and take a statement from a person thought to be acquainted with the relevant facts; and to obtain, examine, make copies of and retain information or documents which are relevant to the carrying out of the Act.

Section 115 provides for the investigation and determination of complaints and disputes between employees and employers by the commissioner. The commissioner has the power to inquire into and determine such complaints and disputes relating to employees, employers or any person liable under the Act.

Notes/Recommendations/Analysis

COMPLIANCE Non-compliant.

RECOMMENDATIONS In order to comply with the Convention:

- (i) legislation should be introduced, which defines domestic work and provides for greater scrutiny and protection on the way domestic workers are treated;
- (ii) legislation should provide an opportunity for inspection of household standards and also offer a mechanism for complaints if standards are being violated.

Article 18

ILO Convention Provision

IMPLEMENTATION

Each Member shall implement the provisions of this Convention, in consultation with the most representative employers and workers organizations, through laws and regulations, as well as through collective agreements or additional measures consistent with national practice, by extending or adapting existing measures to cover domestic workers or by developing specific measures for them, as appropriate.

Corresponding National Law or Regulation

Not applicable.

Law or Regulation covering other workers but not domestic workers

Not applicable.

Notes/Recommendations/Analysis

COMPLIANCE Non-compliant.

RECOMMENDATIONS In order to comply with the Convention Singapore should:

- (i) ratify the Convention, which would provide a starting point for dialogue and discussion with the most representative employers and workers organisations on how best to implement the provisions of the Convention.

INDONESIA

Article 1 ILO Convention Provision

For the purpose of the Convention:

- (a) The term "domestic work" means work performed in or for a household or households;
- (b) The term "domestic worker" means any person engaged in domestic work within an employment relationship;
- (c) A person who performs domestic work only occasionally or sporadically and not on an occupational basis is not a domestic worker.

Corresponding National Law or Regulation

THE MANPOWER ACT (13/2003) The Act contains a single, combined definition of the two terms 'worker' (*pekerja*) and 'labourer' (*buruh*): *"every person who works for a wage or other forms of remuneration."* Domestic workers come within this definition and are not otherwise specifically defined except under the Domestic Violence Act 2004.

DOMESTIC VIOLENCE LEGISLATION (23/2004) For the purpose of Domestic Violence Legislation *"live-in domestic worker" means individuals working to assist the household and living in the household."*

Law or Regulation covering other workers but not domestic workers

THE MANPOWER ACT (13/2003)

The Manpower Act distinguishes between 'entrepreneurs' (*pengusaha*), 'enterprises' (*perusahaan*) and 'employers' or 'work-givers' (*pemberi kerja*).

Domestic workers are employed by employers (*pemberi kerja*), not entrepreneurs or enterprises, and so are not within the scope of the specific employee-protection provisions of the Manpower Act.

Employers are only under a general obligation to provide protection for the welfare, safety and health of their employees.

Entrepreneurs are subject to all of the obligations and employee protections under the Manpower Act.

Notes/Recommendations/Analysis

COMPLIANCE Non-compliant.

Most obligations and employee protection standards established by the Manpower Act are not applicable to employers, by whom domestic workers are employed. Only limited protections are provided to domestic workers, e.g. maternity leave entitlement, welfare, safety and health protection and Workers Social Security Program (*Jamsostek*).

The definition of domestic worker in Domestic Violence Legislation is narrower than that in the Convention; it is limited to 'live-in' domestic workers, thereby excluding those who carry out domestic work in a household but do not reside in the same household that they work in.

RECOMMENDATIONS In order to comply with the Convention:

- (i) the Manpower Act should be amended; or
- (ii) a new law should be enacted,

to specifically define 'domestic worker' and provide specific rights for domestic workers as well as obligations on employees of domestic workers.

Note that the amendment of the Manpower Act or enactment of a new law would require approval of the House of Representatives (*Dewan Perwakilan Rakyat*) and the President.

Article 3 ILO Convention Provision

FREEDOM OF ASSOCIATION AND RIGHT TO COLLECTIVE BARGAINING

1. Each member shall take measures to ensure the effective promotion and protection of the human rights of all domestic workers, as set out in this Convention.
2. Promote and realize the fundamental principles and rights at work such as collective bargaining, elimination of all forms of forced or compulsory labour, and abolition of child labour.
3. Protect the right of domestic workers and employers of domestic workers to join organizations, federations and confederations of their own choosing.

Corresponding National Law or Regulation

RATIFICATION OF VARIOUS CONVENTIONS Indonesia has ratified both the Freedom of Association Convention and the Right to Organise Convention. It has signed, but not ratified, the UN Convention on the Rights of Migrant Workers.

THE MANPOWER ACT, ARTICLE 104 The right of every labourer and worker (including domestic workers) to form and become a member of a trade/labour union is guaranteed.

TRADE UNION/LABOUR UNION ACT NO. 21/2000, ARTICLE 1(6)

“‘Worker’ is defined as a person who works for salary or wages or remunerations in other forms.”

Article 10 also refers to the union of domestic workers as one type of labour union. Therefore ‘worker’ under the Trade Union Act includes domestic workers.

However, there is little publicity of the right to unionise, and the lack of ability to take leave during the week restricts the ability of domestic workers to participate in, or organise, trade unions/labour unions effectively.

PLACEMENT AND PROTECTION OF INDONESIAN WORKERS OVERSEAS

(LAW NO. 39/2004) This law focuses on recruitment and placement. It obliges the government, among other things:

- (i) to ensure that prospective Indonesian workers overseas are given their rights;
- (ii) to undertake diplomatic efforts to ensure full rights and protection are provided to Indonesian Workers Overseas in their countries of destination; and
- (iii) to provide protection to Indonesian workers during the pre-departure, placement, and post-placement periods.

Law or Regulation covering other workers but not domestic workers

THE MANPOWER ACT, ARTICLE 106 Every enterprise which hires more than 50 workers is obliged to establish a bi-partite cooperation institute comprised of democratically elected representatives of the entrepreneur and the workers, each to represent their respective interests.

THE MANPOWER ACT, ARTICLES 116 AND 117 These provisions govern the negotiation, creation and effect of collective work agreements. The Manpower Act also contains provisions for strike and lockout by the workers and entrepreneur, in the event of an industrial dispute.

Notes/Recommendations/Analysis

COMPLIANCE Non-compliant.

Although collective bargaining is mentioned in the Manpower Act, government enforcement is inadequate and employers often ignore agreements.

The union’s legal ability to strike is frustrated by complex requirements for detailed notices, drawn out mediation and multiple layers of bureaucracy.

Many domestic workers report severe restrictions to their freedom of movement and their freedom of association – some are not permitted to leave their employer's house. Subsequently, domestic workers are severely inhibited in their right to join a union, or to access their rights to health or education.

The first and only domestic workers' union, *Tunas Mulia*, was officially recognised in 2004 and works closely with NGOs and other agencies to inform and advocate on behalf of domestic workers.

RECOMMENDATIONS In order to comply with the Convention, Indonesia should:

- (i) extend basic labour law protections to all domestic workers;
- (ii) set up protections for domestic workers going abroad; and
- (iii) inform workers of their right to collective representation.to specifically define 'domestic worker' and provide specific rights for domestic workers as well as obligations on employees of domestic workers.

Article 4 **ILO Convention Provision**

CHILD LABOUR

1. Minimum age of domestic worker is:
 - a. consistent with the provisions of the Minimum Age Convention, 1973 and Worst Forms of Child Labour Convention (1999);
 - b. age of domestic worker should not be lower than that established by national laws and regulations for workers generally.
2. Domestic workers who are under the age of 18 and above the minimum age of employment are not deprived of compulsory schooling, further education or vocational training.

Corresponding National Law or Regulation

ILO CONVENTION NO. 182/1999 The Convention concerning the Prohibition and Immediate Action for the Elimination of Child Labour follows the Convention concerning Minimum Age for Admission to Employment (Minimum Age Convention 1973), and is also based on the Convention on the Rights of the Child 1989.

This applies to persons under the age of 18 and effectively regulates to prohibit and eliminate the worst forms of child labour.

As a ratifying state, Indonesia is obliged to provide the provisions regarding child labour in its laws and regulations. It is reflected in the Act, Law No.39 of 1999

on Human Rights ("**Human Rights Law**") and Law No.23 of 2002 on Child Protection ("**Child Protection Law**").

THE MANPOWER ACT

ARTICLE 1 NUMBER 26 "Child is every person under the age of 18".

ARTICLES 68 TO 75 An entrepreneur is prohibited from employing children, but this provision can be exempted for children in the age range of 13 to 15. Children in this age range are permitted to carry out "light works" as long as the work does not interfere with their physical and mental wellbeing and the entrepreneurs must meet several requirements, one of which is to obtain written permission from his/her parents.

ARTICLE 74 Prohibits anyone from employing children in the worst forms of child labour, including:

1. All jobs in the form of slavery or practices similar to slavery;
2. All jobs that make use of, procure, or offer children for prostitution, the production of pornography, pornographic performances or gambling;
3. All jobs that make use of, procure, or involve children for the production and trade of alcoholic beverages, narcotics, psychotropic substances and other addictive substances; and/or
4. All jobs that are harmful to health, safety and morals.

HUMAN RIGHTS LAW, ARTICLE 64 Every child is entitled to be protected from economic exploitation and to be protected from works that can be harmful for him/her and may interfere with their education, morality, social and spiritual life.

CHILD PROTECTION LAW Provides protection for children from economic exploitation.

Law or Regulation covering other workers but not domestic workers

THE MANPOWER ACT Articles 68 to 75 apply to child labour. Entrepreneurs are not allowed to employ children, but an exception to this may be allowed for children aged 13–15, if they are employed doing light work which does not stunt or disrupt their physical, mental or social development. Strict conditions will still apply (including for the entrepreneurs to obtain written permission from his/her parents).

Notes/Recommendations/Analysis

COMPLIANCE Non-compliant.

Indonesia has laws and regulations which cover Child Labour issues in cooperation with ILO-IPEC and Non-Governmental Organizations.

The problem seems to lie with regard to the implementation of sanctions.

RECOMMENDATIONS In order to comply with the Convention, Indonesia should devise a structure to implement and enforce Child Labour Laws.

Article 5 **ILO Convention Provision**

PROTECTION FROM ABUSE, HARASSMENT AND VIOLENCE

Enjoy effective protection against all forms of abuse, harassment and violence.

Corresponding National Law or Regulation

DOMESTIC VIOLENCE LEGISLATION Live-in domestic workers are included as potential victims of violence. The law has yet to be fully implemented. In practice, the reporting of incidents of abuse or violence is low.

Law or Regulation covering other workers but not domestic workers

THE MANPOWER ACT, ARTICLE 169 an employee/worker may submit a termination of employment application to the Industrial Court, if the entrepreneurs commit any of the following:

- (i) maltreats, harshly affronts or menaces the employee/worker;
- (ii) persuades and/or orders the employee/worker to carry out an action which contravenes the law and regulations;
- (iii) fails to pay the salary on time as determined during a period of three (3) months or more consecutively;
- (iv) does not fulfill the obligations which have been promised to the employee/worker;
- (v) orders the employee/worker to work outside the promised place of work; or
- (vi) gives work that endangers the life, safety, health, or ethics of the employee/worker and is not specified in the Employment Agreement.

Notes/Recommendations/Analysis

COMPLIANCE Non-compliant.

There are no mechanisms for monitoring or protecting domestic workers.

Domestic workers' work is rarely regulated by contract and they are excluded from legal protections provided for basic workers' rights under law.

Deficiencies remain within criminal law in addressing the particular challenges of investigating gender-based crimes, including crimes involving sexual violence.

In conjunction with limitations in the provision of services, these negatively impact the ability of a victim or witness to realize their right to protection, services, and a fair trial.

RECOMMENDATIONS In order to comply with the Convention, Indonesia should, as a minimum requirement, pass legislation that guarantees to domestic workers the rights afforded to other workers in Indonesia under the Manpower Act.

Article 6 **ILO Convention Provision**

RIGHT TO PRIVACY

Fair terms of employment as well as decent working conditions and, if they reside in the household, decent living conditions that respect their privacy.

Corresponding National Law or Regulation

THE MANPOWER ACT, ARTICLE 86(1) Every “Worker” (which does not specifically exclude domestic workers) has the right to occupational health and safety protection.

MEMORANDUM OF UNDERSTANDING (“MOU”), APPENDIX B, PARAGRAPH 4(A)

The MOU signed with Malaysia on 13 May 2006 (only covering Indonesian citizens working in Malaysia) requires employers to provide the domestic workers with reasonable accommodation and basic amenities.

It has been reported that a Letter of Intent (“LOI”) was signed in May 2010, which grants Indonesian workers in Malaysia one day off per week. It has not been possible to verify this as no official copy of such LOI has been located.

UN CONVENTION ON MIGRANT WORKERS, ARTICLE 14

Once ratified, migrant workers will be protected by general privacy right.

Law or Regulation covering other workers but not domestic workers

THE MANPOWER ACT, ARTICLE 77 Statutory limits on working hours impose obligations on “entrepreneurs”.

Notes/Recommendations/Analysis

COMPLIANCE Compliant.

However, the legislation and agreements in their current forms are not sufficient to protect domestic workers’ right to privacy.

RECOMMENDATIONS In order to comply with the Convention, Indonesia should enact legislation that would specifically protect domestic workers’ right to privacy.

Article 7 ILO Convention Provision

TERMS AND CONDITIONS IN EMPLOYMENT CONTRACT

Domestic workers are informed of their terms and conditions of employment in an appropriate, verifiable and easily understandable manner and preferably, where possible, through written contracts.

Corresponding National Law or Regulation

Not applicable.

Law or Regulation covering other workers but not domestic workers

THE MANPOWER ACT

ARTICLE 51 The contract of employment can be in writing or an oral agreement.

ARTICLE 57 A contract for a specified period of time should be made in writing and written in Bahasa Indonesian.

ARTICLE 63 If an indefinite (permanent) employment agreement is made verbally, the entrepreneurs must issue a letter of appointment to the employee/worker concerned.

ARTICLE 54 An employment agreement made in writing must contain (i) the name and address of the company and its business field; (ii) the name, gender, age and address of the employee/laborer; (iii) the class or position of the job; (iv) the work site location; (v) the amount of salary and procedures for payment; (vi) the employment conditions containing the employer's and employee's/Laborer's rights and obligations; (vii) the commencement date and effective period of the employment agreement; (viii) the place and date of the employment agreement; and (vix) the signatures of the parties to the employment agreement.

Notes/Recommendations/Analysis

COMPLIANCE Non-compliant.

RECOMMENDATIONS In order to fully comply with the Convention, Indonesia should amend the Manpower Act so that the protections established by it also apply to domestic workers.

Article 8 ILO Convention Provision

MIGRANT DOMESTIC WORKERS

1. National laws and regulations shall require migrant domestic workers who are recruited in one country for domestic work in another receive a written job offer or contract of employment that is enforceable in the country in which the work is to be performed.

2. Laws, regulations, or other measures shall specify the conditions under which migrant domestic workers are entitled to repatriation.

Corresponding National Law or Regulation

THE MANPOWER ACT ARTICLE 42(2) An employer who is not a corporate entity is not entitled to employ workers of foreign citizenship.

LAW NO. 39/2004

ARTICLE 73 All Indonesian workers overseas are required to sign an employment agreement before they go abroad.

Under this law, Indonesian workers overseas may be repatriated upon: (i) the expiry of their employment contract, (ii) the early termination of their employment contract; (iii) the outbreak of war, a natural disaster, or epidemic in their country of destination; (iv) them suffering an accident and not being able to continue their work; (v) their death in their country of destination; (vi) their going on leave; or (vii) their being deported by the local government.

ARTICLE 63 If an indefinite (permanent) employment agreement is made verbally, the entrepreneurs must issue a letter of appointment to the employee/worker concerned.

MEMORANDUM OF UNDERSTANDING

ARTICLE 9 (which only covers Indonesian citizens working in Malaysia): domestic workers must work in Malaysia in accordance with the employment contract attached to the MOU.

The MOU also requires the Indonesian and Malaysian governments to facilitate the repatriation of domestic workers upon the termination of their employment contracts.

UN CONVENTION ON THE RIGHTS OF MIGRANT WORKERS

Indonesia is a signatory, but has not ratified the convention.

There is no standard contract for migrant domestic workers, who often sign one in Indonesia with the recruitment agency and another upon their arrival at the destination country. Recruitment agencies have full authority, as direct hiring is not allowed. Subsequently the fees are high.

Law or Regulation covering other workers but not domestic workers

THE MANPOWER ACT, ARTICLE 48 Obliges employers who employ workers of foreign citizenship to repatriate them at the end of their employment.

Notes/Recommendations/Analysis

COMPLIANCE

As domestic workers in Indonesia cannot be of foreign citizenship, foreign

domestic workers are not covered by any such protections.

For migrant domestic workers who are Indonesian workers overseas, current legislative provisions should be sufficient to establish these protections.

Article 9 **ILO Convention Provision**

RESIDENCY AND ENTITLEMENTS

1. Free to reach agreement with employer or potential employer on whether to reside in the household.
2. Domestic workers residing in the household are not obliged to remain in the household or with household members during periods of daily and weekly rest or annual leave.
3. Entitled to keep in their possession their travel and identity documents.

Corresponding National Law or Regulation

Not applicable.

Law or Regulation covering other workers but not domestic workers

Confinement is frequently reported and on 26 June 2009, Indonesia instituted a moratorium on sending its migrant domestic workers to Malaysia in response to mistreatment by employers.

It has been reported by NTS Insight May 2011 (Issue 1) that with the signing of the Letter of Intent in May 2010, Indonesian migrant domestic workers in Malaysia are allowed to retain their passports for the duration of their contract.

Notes/Recommendations/Analysis

COMPLIANCE Non-compliant.

RECOMMENDATIONS In order to comply with the Convention, Indonesia should enact legislation that would specifically protect domestic workers' rights to retain their travel and identity documents and to negotiate the terms of their employment contracts with their employers.

Article 10 **ILO Convention Provision**

WORKING TIME

1. Equal treatment between domestic workers and workers in relation to normal hours of work, overtime compensation, periods of daily and weekly rest and paid annual leave.

2. Weekly rest shall be at least 24 consecutive hours.
3. Periods when domestic workers are not free to dispose of their time and remain at the disposal of the employer are regarded as part of the hours of work.

Corresponding National Law or Regulation

1945 CONSTITUTION

Everyone has the right to work and be rewarded and be given decent and fair treatment in their employment.

Employers of domestic workers are under a general obligation to protect the worker's welfare, safety and health (both mental and physical).

THE MANPOWER ACT, ARTICLES 5 AND 6 Every *person* (which includes those seeking domestic work) available for a job has the same opportunity without being discriminated against and all workers have the right to receive equal treatment without discrimination from their employers.

Law or Regulation covering other workers but not domestic workers

THE MANPOWER ACT

ARTICLE 77 An obligation is imposed on entrepreneurs to observe the following regular working hours for their workers: (i) 7 hours a day and 40 hours a week for 6 days a week; or (ii) 8 hours a day and 40 hours a week for 5 days a week. These regular hours are disappplied to certain types of work and business sectors (e.g. for work on offshore oil rigs, long distance transport drivers, long distance flight crews, work aboard ships (at sea) and logging).

ARTICLE 78 Entrepreneurs are required to limit overtime work to that which is agreed with the workers and to no more than 3 hours a day or 14 hours a week. Overtime-pay should also be paid for overtime.

ARTICLE 79 Breaks from work must be provided: 30 minutes per every 4 consecutive working hours; 1 day after 6 days worked or 2 days after 5 days worked; 12 workdays per 12 consecutive months worked or (by agreement with the employee) 2 months per 6 years if 12 day annual leave is not taken – 2 months to be taken in years 7–8.

Notes/Recommendations/Analysis

COMPLIANCE Non-compliant.

RECOMMENDATIONS In order to comply with the Convention, Indonesia should amend the Manpower Act so that the protections established by it apply also to domestic workers.

Article 11 ILO Convention Provision

WAGE

Domestic workers enjoy minimum wage coverage where such coverage exists and without discrimination based on sex.

Corresponding National Law or Regulation

THE MANPOWER ACT

ARTICLE 88 All workers/labourers are entitled to “earn a living that is decent from the viewpoint of humanity” and that the government shall establish a wage policy that protects the worker/labourer (including a minimum wage).

ARTICLE 5 All employees have the same rights and must be given the same opportunity to obtain work and a viable standard of living without discrimination with respect to gender, ethnicity, race, religion or politics commensurate with their talents and abilities; this includes equal treatment for people with physical disabilities.

Law or Regulation covering other workers but not domestic workers

THE MANPOWER ACT

Fundamental workers' rights are provided therein, including regulation of hours of work per week, defined rest periods, holiday and leave arrangements, including maternity leave, minimum wage payment and dispute resolution mechanisms.

Note that some fundamental worker's rights are available to domestic workers, e.g. maternity leave entitlement, welfare, safety and health protection and Workers Social Security Program (*Jamsostek*) which should be implemented in accordance with the relevant laws and regulations.

ARTICLE 90 Only entrepreneurs are prohibited from paying wages lower than the minimum wage. The article also includes provisions for the postponement of minimum wage payments for entrepreneurs who cannot afford to pay minimum wage to their workers.

REGULATION OF MINISTER OF MANPOWER

NO. PER-01/MEN/1999 ON MINIMUM WAGE Enterprises are prohibited from paying wages lower than the minimum wage.

Notes/Recommendations/Analysis

COMPLIANCE Compliant.

RECOMMENDATIONS In order to comply with the Convention, Indonesia should amend the Manpower Act so that the protections established by it apply also to domestic workers.

Article 12 **ILO Convention Provision**

PAYMENT IN KIND

1. Domestic workers shall be paid directly in cash at regular intervals at least once a month. Unless provided for by national laws, regulations or collective agreements, payment may be made by bank transfer, bank cheque, postal cheque, money order or other lawful means of monetary payment, with the consent of the worker concerned.
2. National laws, regulations, collective agreements or arbitration awards may provide for the payment of a limited proportion of the remuneration of domestic workers in the form of payments in kind that are not less favourable than those generally applicable to other categories of workers, provided that measures are taken to ensure that such payments in kind are agreed to by the worker, are for the personal use and benefit of the worker, and that the monetary value attributed to them is fair and reasonable.

Corresponding National Law or Regulation

Not applicable.

Law or Regulation covering other workers but not domestic workers

Not applicable. In practice, remuneration in kind will depend on the agreement between employees and their employers.

Notes/Recommendations/Analysis

COMPLIANCE Non-compliant.

RECOMMENDATIONS In order to comply with the Convention, Indonesia should amend the Manpower Act or enact new regulation to be in accordance with Article 12.

Article 13 **ILO Convention Provision**

OCCUPATIONAL SAFETY AND HEALTH

Right to a safe and healthy working environment, ensuring the occupational safety and health of domestic workers.

Corresponding National Law or Regulation

THE MANPOWER ACT, ARTICLE 86(1) Every “Worker” (which does not specifically exclude domestic workers) has the right to occupational health and safety protection.

LAW NO. 36/2009, ARTICLE 166 ‘*Majikan*’ (which is not specifically defined but is understood to mean the employer of a domestic worker) is to guarantee the health of the worker (by preventive, remedial or recovery actions) and to bear the costs of health care of the worker.

THE PLACEMENT AND PROTECTION OF INDONESIAN WORKERS OVERSEAS

(LAW NO. 39/2004) Certain rights of and protections are conferred to Indonesian Workers Overseas, but no specific protections are offered in respect of a safe and healthy working environment, ensuring the occupational health and safety of domestic workers.

THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

(ICESCR) Indonesia ratified this covenant in 2005 along with the ICCPR, which includes rights that affect domestic workers: Right to “safe and healthy working conditions” (ICESCR art 7), “Periodic holidays with pay” and “remuneration for public holidays” (ICESCR art 7), Right to social security (ICESCR art 9), “Equal remuneration for work of equal value” (ICESCR art 7), Maternity protection (ICESCR art 10).

Law or Regulation covering other workers but not domestic workers

LAW NO. 1 OF 1970 ON OCCUPATIONAL SAFETY Basic principles and requirements of workplace safety, such as the safeguard of, and maintaining of, construction and provision of first aid in case of injury, appears to apply to entrepreneurs only. Domestic workers do not appear to be covered under this law.

LAW NO. 36/2009 ON HEALTH, ARTICLE 164 Manager of a workplace must comply with healthy working standards determined by the government and is responsible for occupational accidents.

DECREE OF THE MINISTER OF HEALTH NO. 261/MENKES/SK/II/1998 A standard has been set for environmental health conditions for offices and industrial workplaces.

Notes/Recommendations/Analysis

COMPLIANCE Compliant.

However, the Law No 39/2004 on Migrant Worker Protection does not sufficiently address the issue of placement of migrant workers.

The current system is heavily prejudiced against migrant workers.

Also, Law No 40/2004 on the National Social Security System has not brought any changes and is in fact a restatement of the previous regulation.

RECOMMENDATIONS In order to comply with the Convention, Indonesia should:

- (i) extend basic labour law protections to all domestic workers;
- (ii) set up protections for domestic workers going abroad; and
- (iii) inform workers of their right to collective representation.

Article 14 **ILO Convention Provision**

SOCIAL SECURITY

Domestic workers enjoy conditions that are not less favourable than those applicable to workers in respect of social security protection, including with respect to maternity.

Corresponding National Law or Regulation

THE MANPOWER ACT, ARTICLE 99 Workers/labourers and their families shall each be entitled to social security administered in accordance with legislation

THE CONSTITUTION, AS AMENDED IN 2002

Social security is mandated by Article 5(1), 20, 28H(1), (2) and (3), and 34(1) and (2). Everyone (be they civil servants, private sector employees, or self-employed farmers, fishers, traders, and so on) is guaranteed fulfillment of their basic needs, and equal social security.

Every person has the right of social security guarantee that enables him/her to develop completely with dignity as a human being under Article 28H(3).

LAW NO 40 OF 2004 ON NATIONAL SOCIAL SECURITY SYSTEM (SJSN)

This law anticipates the achievement of the universal coverage in a phased manner.

It only states that it is mandatory for employers to enroll their employees to the social security schemes and that the Government will provide social assistance to the poor. The explanation notes to the law states that “[a]lthough membership is mandatory for all citizens, its implementation will take place in accordance with the economic capacity of the people and the Government as well as the feasibility of the program. The first stage will start with workers in the formal sector, in parallel with voluntary membership of the informal sector workers, including farmers, fishermen and the self-employed.”

The scope of the law covers five social security programs: (i) health insurance; (ii) employment injury; (iii) old-age (provident fund); (iv) pensions; and (v) death benefits.

THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

(ICESCR) Indonesia ratified the covenant in 2005, along with the ICCPR, which

includes rights that affect domestic workers: Right to “safe and healthy working conditions” (ICESCR art 7), “Periodic holidays with pay” and “remuneration for public holidays” (ICESCR art 7), Right to social security (ICESCR art 9), “Equal remuneration for work of equal value” (ICESCR art 7), Maternity protection (ICESCR art 10).

Law or Regulation covering other workers but not domestic workers

THE MANPOWER ACT

Fundamental workers’ rights are provided therein, including regulation of hours of work per week, defined rest periods, holiday and leave arrangements, including maternity leave, minimum wage payment and dispute resolution mechanisms.

Note that some fundamental worker’s rights are available to domestic workers, e.g. maternity leave entitlement, welfare, safety and health protection and Workers Social Security Program (*Jamsostek*) which should be implemented in accordance with the relevant laws and regulations.

LAW NO. 3/1992

According to legal provisions on workers’ social security, it is mandatory for every company or entrepreneur employing 10 workers or more or generating a monthly payroll of at least IDR 1 million a month, to apply for the Workers Social Security Program (*Jamsostek*), operated by the executing agency (currently PT *Jamsostek (Persero)*). This social security program covers occupational accident security, death security, old age security, and health maintenance.

A company or an entrepreneur is not obligated to enroll its employees in the social security program, if it offers an independent employee social security program with benefits comparable or better than those offered by the Package of Basic Health Maintenance Security (according to Government Regulation No. 14/1993, as lastly amended by Government Regulation No. 53 /2012).

Under Law No. 3/1992, employees have the right to “compensation in money as a replacement for part of a lost or decreased income and a service due to a circumstance or condition in which an employee suffers accidents or situations like an occupational injury, illness, pregnancy, childbirth, old age and death”.

Every employee has a right to have manpower social security (Article 3 and Article 7). The scope of the manpower social security program is set out in Article 6 and refers to the occupational accident security, death security, old age security and health care security.

This Law covers employees working at enterprises or individuals earning wages; whilst “manpower” working outside a working relation (not in an enterprise), the arrangements regarding the social case system is arranged via Government Regulations.

Notes/Recommendations/Analysis

COMPLIANCE Compliant.

However, social security programmes in Indonesia have partial coverage and are usually limited to those employed in the formal sector. Although Article 99 of the Manpower Act confers rights for workers to the social security, the requirement under Law No. 3/1992 in relation to participation in the Workers Social Security Program (*Jamsostek*) only applies for a company or entrepreneur employing 10 workers or more or generating a monthly payroll of at least IDR 1 million a month). In practice, however, it is possible for an employer or '*majikan*' (who is not an entrepreneur or '*pengusaha*') to apply for the Workers Social Security Program (*Jamsostek*) for their domestic workers. The social security administering bodies operate partially based on laws and regulations that are fragmented, overlapping, inconsistent, and not strictly enforced. The benefits the participants receive are limited, they do not receive optimal protection.

Indonesia has an impressive record of ratifying international conventions and covenants, but it is unclear whether the substance of agreements is not binding domestically unless it is incorporated into a specific law. It is not likely, for example, that an individual domestic worker could take legal action against an employer or the government on the basis of suffering harm due to the non-enforcement of an agreement which Indonesia has ratified but not incorporated into domestic law.

RECOMMENDATIONS To comply with the Convention, Indonesia should:

- (i) at both national/central and regional levels, support the society by conducting public consultations and taking technical input on draft laws, local ordinances and other forms of regulation seriously;
- (ii) pass a specific Law (Undang-Undang) on the protection of domestic workers. This would allow domestic workers to be recognized as workers;
- (iii) provide an opportunity to legislatively address special issues faced by domestic workers; and
- (iv) focus on enforcement of standards relating to domestic work – including “collating” standards from the handful of existing national laws that already apply in some way to domestic workers.

Article 15 ILO Convention Provision

REGULATION OF RECRUITMENT/EMPLOYMENT AGENCIES

Protect domestic workers, including migrant domestic workers, recruited or placed by private employment agencies, from abusive practices.

- (a) Determine conditions governing the operation of private employment agencies;
- (b) Adequate machinery and procedures exist for the investigation of complaints, alleged abuses and fraudulent practices;
- (c) Members, and where appropriate, in collaboration with other members, provide adequate protection for and prevent abuses of domestic workers recruited or placed in their territory by private employment agencies;
- (d) Where workers are recruited to one country for work in another, conclude bilateral, regional or multilateral agreements;
- (e) Fees charged by private employment agencies are not deducted from the remuneration of domestic workers.

Corresponding National Law or Regulation

THE MANPOWER ACT, ARTICLE 42(2) Note that an employer, who is not a corporate entity, is not entitled to employ workers of foreign citizenship.

LAW NO. 39/2004 ON THE PLACEMENT AND PROTECTION OF INDONESIAN WORKERS OVERSEAS Provides procedures for recruitment and placement, requires establishment and operation of a private employment agency, imposes responsibilities and obligations with respect to placement, rights and obligations of Indonesian workers overseas and private employment agencies.

Law or Regulation covering other workers but not domestic workers

There are no standards that control the amount or percentage of recruitment fees that workers must pay, nor are there standards that dictate how such fees are to be repaid. In some instances a fee is deducted from the worker's pay check first.

Where repayment is made in 6 months, an arbitrary interest rate is often applied for repayment (this can range from as low as 7% to as high as 50%). Repayment can take longer than 6 months and in some cases, the end employer (that is, the employer in the destination country) covers the fees entirely.

The conditions surrounding recruitment fees significantly impact the workers' net income, and subsequently determine the amount of funds they are able to send back to their families in Indonesia.

Notes/Recommendations/Analysis

COMPLIANCE Non-compliant.

Indonesia does not currently comply with Article 15 of the Convention and should implement legislation protecting workers from abusive recruitment practices.

Article 16 ILO Convention Provision

ACCESS TO DISPUTE SETTLEMENT PROCEDURES

Effective access to courts, tribunals or other dispute resolution mechanisms under conditions that are not less favourable than those available to workers generally.

Corresponding National Law or Regulation

Not applicable.

Law or Regulation covering other workers but not domestic workers

THE MANPOWER ACT, ARTICLE 136 There are dispute resolution procedures that set out how to handle industrial disputes between workers and entrepreneurs.

LAW NO. 2 OF 2004

Clear procedures are set out for settlement of industrial relations disputes, which consist of:

- a. **Bipartite negotiations:** meetings between employer or employer association(s) and employees or labour unions or between one labour union and another;
- b. **Mediation:** mediation is conducted by the relevant regional manpower office through an amicable settlement facilitated by a mediator;
- c. **Conciliation:** conciliation means the settlement of disputes over interests, termination of employment or amongst labour unions in a company through an amicable settlement facilitated by a conciliator;
- d. **Arbitration:** arbitration means the settlement of disputes over interests and amongst labour unions in a company outside the IDSC through a written agreement from both disputed parties to submit their disputes to the arbitrators. The arbitration award is final and binding;
- e. **Industrial Disputes Settlement Court (IDSC):** The IDSC is a special court in the district court and under the auspice of the Supreme Court.

Notes/Recommendations/Analysis

COMPLIANCE Non-compliant.

RECOMMENDATIONS To comply with the Convention, Indonesia should implement legislation providing for effective access to dispute resolution for domestic workers.

Article 17 ILO Convention Provision

LABOR INSPECTION

1. Develop and implement measures for labour inspection, enforcement and penalties.
2. Measures shall specify the conditions under which access to household premises may be granted, having due respect for privacy.

Corresponding National Law or Regulation

THE DOMESTIC VIOLENCE LEGISLATION There are penalties if domestic workers are found to be victims of violence.

The law has yet to be fully implemented, especially with regards to violence against domestic workers (as reported by Amnesty International).

Together with the Witness Protection Act passed in July 2006, protections available to victims and witnesses of domestic violence have increased significantly.

Law or Regulation covering other workers but not domestic workers

THE MANPOWER ACT, ARTICLES 176 – 180 These provisions empower labour inspectors to carry out inspections on behalf of the minister and government.

Labour inspectors are subject to confidentiality and must refrain from abusing their authority.

Notes/Recommendations/Analysis

COMPLIANCE Non-compliant.

RECOMMENDATIONS To comply with the Convention, Indonesia should enact national laws on the protection of domestic workers, which would allow them to be recognised as workers and which would provide a framework for the inspection of households and for the establishment of a complaints mechanism.

Article 18 ILO Convention Provision

IMPLEMENTATION

Each Member shall implement the provisions of this Convention, in consultation with the most representative employers and workers organizations, through laws and regulations, as well as through collective agreements or additional measures consistent with national practice, by extending or adapting existing measures to cover domestic workers or by developing specific measures for them, as appropriate.

Corresponding National Law or Regulation

Not applicable.

Law or Regulation covering other workers but not domestic workers

Not applicable.

Notes/Recommendations/Analysis

COMPLIANCE Non-compliant.

RECOMMENDATIONS To comply with the Convention, Indonesia should ratify the Convention.

SOUTH AFRICA

Article 1 ILO Convention Provision

DEFINITIONS

For the purpose of the Convention:

- (a) The term “domestic work” means work performed in or for a household or households;
- (b) The term “domestic worker” means any person engaged in domestic work within an employment relationship;
- (c) A person who performs domestic work only occasionally or sporadically and not on an occupational basis is not a domestic worker.

Corresponding National Law or Regulation

The Basic Conditions of Employment Act No. 75 of 1997 (“**BCEA**”) defines a “domestic worker” as an employee who performs domestic work in the home of his or her employer and includes:

- a. a gardener;
- b. a person employed by a household as driver of a motor vehicle; and
- c. a person who takes care of children, the aged, the sick, the frail or the disabled, but does not include a farm worker.

The BCEA Sectoral Determination 7: Domestic Worker Sector (“**Sectoral Determination**”) which was enacted by the Minister of Labour (“**Minister**”) in terms of section 51 of the BCEA defines a “domestic worker” as any domestic worker or independent contractor who performs domestic work in a private household and who receives, or is entitled to receive, pay and includes:

- a. a gardener;
- b. a person employed by a house hold as a driver of a motor vehicle;
- c. a person who takes care of children, the aged, the sick, the frail or the disabled; and
- d. domestic workers employed or supplied by employment services.

For the purposes of the Labour Relations Act No. 66 of 1995 (“**LRA**”) an “employee” is defined in section 213 as:

- a. any person, excluding an independent contractor, who works for another person or for the State and who receives, or is entitled to receive, any remuneration; and

- b. any other person who in any manner assists in carrying on or conducting the business of an employer.

Law or Regulation covering other workers but not domestic workers

Not applicable.

Notes/Recommendations/Analysis

Although “domestic work” in itself is not defined in South African legislation, the concept as defined in the Convention seems to fall within the ambit of a “domestic worker” as defined in the BCEA, when read with the general definition of “employee” contained in the BCEA and LRA. The definition of “domestic worker” found in the BCEA, read with the definition of “employee” in the BCEA and LRA, is also in line with the definition of “domestic worker” contained in the Convention.

Since the definition of “domestic worker” is broader than the definition in the Convention, South Africa complies adequately with the definition of “domestic worker”.

Article 3 ILO Convention Provision

FREEDOM OF ASSOCIATION AND RIGHT TO COLLECTIVE BARGAINING

1. Each member shall take measures to ensure the effective promotion and protection of the human rights of all domestic workers, as set out in this Convention.
2. Promote and realize the fundamental principles and rights at work such as collective bargaining, elimination of all forms of forced or compulsory labour, and abolition of child labour.
3. Protect the right of domestic workers and employers of domestic workers to join organizations, federations and confederations of their own choosing.

Corresponding National Law or Regulation

Section 18 of the Constitution of South Africa, Act No. 108 of 1996 (“the **Constitution**”) guarantees everyone the right to freedom of association.

Section 23(2) of the Constitution more particularly states that (2) Every worker has the right: (a) to form and join a trade union; (b) to participate in the activities and programmes of a trade union; and (c) to strike.

The LRA provides for employees' right to freedom of association (section 4), the right to collective bargaining (Chapter 3) and the right to join trade unions of their choosing (section 4).

Section 4 of the LRA states that:

1. Every employee has the right
 - (a) to participate in forming a trade union or federation of trade unions; and
 - (b) to join a trade union, subject to its constitution.
2. Every member of a trade union has the right, subject to the constitution of that trade union:
 - (a) to participate in its lawful activities;
 - (b) to participate in the election of any of its office-bearers, officials or trade union representatives; to stand for election and be eligible for appointment as an office bearer or official and, if elected or appointed, to hold office; and
 - (d) to stand for election and be eligible for appointment as a trade union representative and, if elected or appointed, to carry out the functions of a trade union representative in terms of this Act or any collective agreement.
3. Every member of a trade union that is a member of a federation of trade unions has the right, subject to the constitution of that federation:
 - (a) to participate in its lawful activities;
 - (b) to participate in the election of any of its office-bearers or officials; and to stand for election and be eligible for appointment as an office-bearer or official and, if elected or appointed, to hold office.

Importantly, the rights conferred on the representatives of trade unions of domestic workers are limited by section 17 of the LRA which states that:

1. For the purposes of this section, "domestic sector" means the employment of employees engaged in domestic work in their employers' homes or on the property on which the home is situated.
2. The rights conferred on representative trade unions by this Part in so far as they apply to the domestic sector are subject to the following limitations:
 - (a) the right of access to the premises of the employer conferred by section 12 [see below] on an office-bearer or official of a

representative trade union does not include the right to enter the home of the employer, unless the employer agrees; and

- (b) the right to the disclosure of information conferred by section 16 [see below] does not apply in the domestic sector.

Law or Regulation covering other workers but not domestic workers

The following Sections of the LRA (Section 12 and 16) are of limited application to the domestic sector (see above): Section 12 of the LRA deals with trade unions' access to the workplace and states that:

1. Any office-bearer or official of a representative trade union is entitled to enter the employer's premises in order to recruit members or communicate with members, or otherwise serve members' interests.
2. A representative trade union is entitled to hold meetings with employees outside their working hours at the employer's premises.
3. The members of a representative trade union are entitled to vote at the employer's premises in any election or ballot contemplated in that trade union's constitution.
4. The rights conferred by this section are subject to any conditions as to time and place that are reasonable and necessary to safeguard life or property or to prevent the undue disruption of work.

Section 16 of the LRA deals with the disclosure of information and holds that:

1. For the purposes of this section, "representative trade union" means a registered trade union, or two or more registered trade unions acting jointly, that have as members the majority of the employees employed by an employer in a workplace.
2. Subject to subsection 5., an employer must disclose to a trade union representative all relevant information that will allow the trade union representative to perform effectively the functions referred to in section 14(4).
3. Subject to subsection 5., whenever an employer is consulting or bargaining with a representative trade union, the employer must disclose to the representative trade union all relevant information that will allow the representative trade union to engage effectively in consultation or collective bargaining.
4. The employer must notify the trade union representative or the representative trade union in writing if any information disclosed in terms of subsection 2. or 3. is confidential.

5. An employer is not required to disclose information:
 - (a) that is legally privileged;
 - (b) that the employer cannot disclose without contravening a prohibition imposed on the employer by any law or order of any court;
 - (c) that is confidential and, if disclosed, may cause substantial harm to an employee or the employer; or
 - (d) that is private personal information relating to an employee, unless that employee consents to the disclosure of that information.
6. If there is a dispute about what information is required to be disclosed in terms of this section, any party to the dispute may refer the dispute in writing to the Commission.
7. The party who refers the dispute to the Commission must satisfy it that a copy of the referral has been served on all the other parties to the dispute.
8. The Commission must attempt to resolve the dispute through conciliation.
9. If the dispute remains unresolved, any party to the dispute may request that the dispute be resolved through arbitration.
10. In any dispute about the disclosure of information contemplated in subsection 6., the commissioner must first decide whether or not the information is relevant.
11. If the commissioner decides that the information is relevant and if it is information contemplated in subsection 5.(c) or (d), the commissioner must balance the harm that the disclosure is likely to cause to an employee or employer against the harm that the failure to disclose the information is likely to cause to the ability of a trade union representative to perform effectively the functions referred to in section 14(4) or the ability of a representative trade union to engage effectively in consultation or collective bargaining.
12. If the commissioner decides that the balance of harm favours the disclosure of the information, the commissioner may order the disclosure of the information on terms designed to limit the harm likely to be caused to the employee or employer.
13. When making an order in terms of subsection 12., the commissioner must take into account any breach of confidentiality in respect of information disclosed in terms of this section at that workplace and

may refuse to order the disclosure of the information or any other confidential information which might otherwise be disclosed for a period specified in the arbitration award.

14. In any dispute about an alleged breach of confidentiality, the commissioner may order that the right to disclosure of information in that workplace be withdrawn for a period specified in the arbitration award.

Notes/Recommendations/Analysis

South Africa's Constitution protects all employees' right to freedom of association, which protection is further provided for in the LRA. The LRA holds that every employee has the right to participate in forming a trade union or federation of trade unions and to join a trade union, subject to the trade union's constitution.

The protection afforded by the LRA with regard to the right to freedom of association (specifically the right to join trade unions) is available to any individual falling within the LRA's definition of an employee. In considering the LRA's definition of "employee", domestic workers clearly fall within this definition and are therefore protected by the provisions of the LRA.

South African law complies with the Convention. However, measures should be taken to strengthen the capacity of organisations representing domestic workers and the employers of domestic workers to effectively promote the interests of their members.

Article 4 ILO Convention Provision

CHILD LABOUR

1. Minimum age of domestic worker is:
 - a. consistent with the provisions of the Minimum Age Convention, 1973 and Worst Forms of Child Labour Convention (1999);
 - b. age of domestic worker should not be lower than that established by national laws and regulations for workers generally.
2. Domestic workers who are under the age of 18 and above the minimum age of employment are not deprived of compulsory schooling, further education or vocational training.

Corresponding National Law or Regulation

Section 28(1)(e) of the Constitution states that every child has the right to

be protected from exploitative labour practices and section 28(1)(f) of the Constitution states that a child shall not to be required or permitted to perform work or provide services that:

- (i) are inappropriate for a person of that child's age; or
- (ii) place at risk the child's well-being, education, physical or mental health or spiritual, moral or social development.

The Constitution further goes on to state in section 28(2) that a child's best interests are of paramount importance in every matter concerning the child.

Section 28(3) of the Constitution defines a "child" as a person under the age of 18 years.

Clause 23 of the Sectoral Determination provides that:

1. No person may employ as a domestic worker a child:
 - (a) who is under 15 years of age; or
 - (b) who is under the minimum school leaving age in terms of any law, if this is 15 or older.
2. No person may employ a child in an employment:
 - (a) that is inappropriate for a person of that age;
 - (b) that places at risk the child's well-being, education, physical or mental health, or spiritual, moral or social development.
3. An employer must maintain for three years a record of the name, date of birth and address of every domestic worker under the age of 18 years employed by them.
4. Subject to the Constitution of the Republic of South Africa, all forced labour is prohibited.
5. No person may, for their own benefit or for the benefit of someone else, cause, demand or impose forced labour in contravention of sub-clause 4.
6. A person who employs a child in contravention of sub-clause 1. and 2. or engages in any form of forced labour in contravention of sub-clauses 4. and 5. commits an offence in terms of sections 46 and 48 of the Basic Conditions of Employment Act respectively, read with section 93 of that Act.

The Sectoral Determination defines a "child" as a person who is under 18 years of age.

Furthermore, section 43 of the BCEA deals with the prohibition of employment of children providing that:

1. No person may employ a child:
 - (a) who is under 15 years of age; or
 - (b) who is under the minimum school-leaving age in terms of any law, if this is 15 or older.
2. No person may employ a child in employment:
 - (a) that is inappropriate for a person of that age;
 - (b) that places at risk the child's well-being, education, physical or mental health, or spiritual, moral or social development.
3. A person who employs a child in contravention of subsection 1. or 2. commits an offence.

The BCEA further goes on to qualify the employment of children that are 15 years or older in section 44 by stating that:

1. Subject to section 43(2), the Minister may, on the advice of the Commission, make regulations to prohibit or place conditions on the employment of children who are at least 15 years of age and no longer subject to compulsory schooling in terms of any law.
2. A person who employs a child in contravention of subsection 1. commits an offence.

In addition, section 31(1) of the South African Schools Act No. 84 of 1996 requires every parent to cause every learner for whom he or she is responsible to attend a school until the last school day of the year in which the learner reaches the age of 15 or the ninth grade, whichever is the first.

Law or Regulation covering other workers but not domestic workers

Not applicable.

Notes/Recommendations/Analysis

South African law complies with the Convention in connection with minimum age. However, the types of work that could be harmful and damaging as well as what constitutes inappropriate employment should be specified and prohibited.

Furthermore, there are proposed amendments to the provisions in the BCEA dealing with the prohibition and regulation of child labour that would allow for the prohibition and regulation of child labour to be extended to cover all work by children and not only work by children as employees. These amendments will align the BCEA with South Africa's international law obligations in terms of the International Labour Organisation Convention on the Worst Forms of Child Labour.

Article 5 ILO Convention Provision

PROTECTION FROM ABUSE, HARASSMENT AND VIOLENCE

Enjoy effective protection against all forms of abuse, harassment and violence.

Corresponding National Law or Regulation

Section 12(c) of the Constitution deals with the freedom and security of the person and states that everyone has the right to be free from all forms of violence from either public or private sources.

The Domestic Violence Act No. 116 of 1998 affords the victims of domestic violence the maximum protection from domestic abuse that the law can provide and introduces measures which seek to ensure that the relevant organs of state give full effect to the provisions of this Act, and thereby convey that the State is committed to the elimination of domestic violence.

For the purposes of the aforementioned Act “domestic violence” is defined as

- a. physical abuse;
- b. sexual abuse;
- c. emotional, verbal and psychological abuse;
- d. economic abuse;
- e. intimidation;
- f. harassment:
- g. stalking;
- h. damage to property:
- i. entry into the complainant’s residence without consent, where the parties do not share the same residence; or
- j. any other controlling or abusive behaviour towards a complainant,

where such conduct harms, or may cause imminent harm to, the safety, health or wellbeing of the complainant.

The Protection from Harassment Act No.17 of 2011 affords victims of harassment an effective remedy against such behaviour. “Harassment” is defined as directly or indirectly engaging in conduct that the respondent knows or ought to know:

- a. causes harm or inspires the reasonable belief that harm may be caused to the complainant or a related person by unreasonably:
 - i. following, watching, pursuing or accosting of the

- complainant or a related person, or loitering outside of or near the building or place where the complainant or a related person resides, works, carries on business, studies or happens to be;
- ii. engaging in verbal, electronic or any other communication aimed at the complainant or a related person, by any means, whether or not conversation ensues; or
- iii. sending, delivering or causing the delivery of letters, telegrams, packages, facsimiles, electronic mail or other objects to the complainant or a related person or leaving them where they will be found by, given to, or brought to the attention of, the complainant or a related person; or
- b. amounts to sexual harassment of the complainant or a related person.

Law or Regulation covering other workers but not domestic workers

Not applicable.

Notes/Recommendations/Analysis

Even though the South African legislation does not specifically refer to abuse or defines it pertinently, the scope of the legislation is still considered broad enough to satisfy the Convention.

Article 6 ILO Convention Provision

RIGHT TO PRIVACY

Fair terms of employment as well as decent working conditions and, if they reside in the household, decent living conditions that respect their privacy.

Corresponding National Law or Regulation

Part D of the Sectoral Determination provides for matters such as hours of work (ordinary hours of work, overtime), payment for overtime, night work, payment for work on Sunday.

Chapter 2 of the BCEA on the regulation of working time addresses the same issues as Part D of the Sectoral Determination.

Law or Regulation covering other workers but not domestic workers

Not applicable.

Notes/Recommendations/Analysis

Neither the Sectoral Determination nor the BCEA provide specific provisions relating to decent working conditions and decent living conditions that respect the privacy of the domestic worker.

A pro forma written particulars of employment and job description is attached to the Sectoral Determination. This pro forma document deals with accommodation as one of the clauses. The accommodation clause states the following:

- a. the employee will be provided with accommodation for as long as the employee is in the service of the employer, and which shall form part of his/her remuneration package;
- b. the accommodation may only be occupied by the worker, unless by prior arrangement with the employer;
- c. prior permission should be obtained for visitors who wish to stay the night. However where members of the employee's direct family are visiting, such permission will not be necessary.

It is important to note that this pro forma document only serves as an example and is therefore not mandatory. Therefore, specific measures should be taken to ensure that domestic workers enjoy decent working conditions, and where relevant, decent living conditions that respect their privacy. These measures should be detailed and not simply provide for general protection.

Article 7 ILO Convention Provision

TERMS AND CONDITIONS IN EMPLOYMENT CONTRACT

Domestic workers are informed of their terms and conditions of employment in an appropriate, verifiable and easily understandable manner and preferably, where possible, through written contracts.

Corresponding National Law or Regulation

Clause 9 of the Sectoral Determination requires employers to provide a domestic worker with certain written particulars of employment, namely,

1. An employer must supply a domestic worker, when the domestic worker starts work with the following particulars in writing:
 - (a) the full name and address of the employer;
 - (b) the name and occupation of the domestic worker, or a brief description of the work for which the domestic worker is employed;
 - (c) the place of work, and where the domestic worker is required

- or permitted to work at various places, an indication of this;
 - (d) the date on which the employment began;
 - (e) the domestic worker's ordinary hours of work and days of work;
 - (f) the domestic worker's wage or the rate and method of payment;
 - (g) the rate of pay for overtime work;
 - (h) any other cash payments that the domestic worker is entitled to;
 - (i) any payment in kind that the domestic worker is entitled to and the value of the payment in kind;
 - (j) how frequently wages will be paid;
 - (k) any deductions to be made from the domestic worker's wages;
 - (l) the leave to which the domestic worker is entitled; and
 - (m) the period of notice required to terminate employment, or if employment is for a specified period, the date when employment is to terminate.
2. If a domestic worker is not able to understand the written particulars, the employer must ensure that they are explained to the domestic worker in a language and in a manner that the domestic worker understands.
 3. The employer must revise the written particulars if the employer and domestic worker agree to any change in the domestic worker's terms of employment.
 4. The employer must sign the written particulars and any change in the terms of clause 3.
 5. The employer may require the domestic worker to:
 - (a) acknowledge receipt of the written particulars in writing on a copy of the particulars; or
 - (b) if the domestic worker is unable to or refuses to acknowledge receipt, record that the domestic worker has received a copy of the written particulars.
 6. An employer must retain a copy of the written particulars while the domestic worker is employed and for three years thereafter.

Chapter 4 of the BCEA dealing with the particulars of employment and remuneration, and more specifically section 29 of the BCEA which addresses

written particulars of employment overlap with the issues addressed by the Sectoral Determination.

Law or Regulation covering other workers but not domestic workers

Not applicable.

Notes/Recommendations/Analysis

South African legislation is in compliance with the provisions of the Convention.

Article 8 ILO Convention Provision

MIGRANT DOMESTIC WORKERS

1. National laws and regulations shall require migrant domestic workers who are recruited in one country for domestic work in another receive a written job offer or contract of employment that is enforceable in the country in which the work is to be performed.
2. Laws, regulations, or other measures shall specify the conditions under which migrant domestic workers are entitled to repatriation.

Corresponding National Law or Regulation

Not applicable.

Law or Regulation covering other workers but not domestic workers

Not applicable.

Notes/Recommendations/Analysis

No legislation is currently in place in South Africa to regulate the conditions of employment applicable specifically to migrant domestic workers.

Furthermore, South African legislation does not distinguish between migrant domestic workers and South African domestic workers.

However, once migrant workers are lawfully employed in South Africa they are automatically protected by the relevant labour laws that apply to all workers and the same rights are conferred upon such workers.

National laws and regulations should be adopted to require migrant domestic workers who are recruited in one country to do domestic work in another to receive a written job offer or contract of employment, containing all the relevant employment details as stipulated in the Convention, prior to the crossing of national borders.

Article 9 ILO Convention Provision

RESIDENCY AND ENTITLEMENTS

1. Free to reach agreement with employer or potential employer on whether to reside in the household.
2. Domestic workers residing in the household are not obliged to remain in the household or with household members during periods of daily and weekly rest or annual leave.
3. Entitled to keep in their possession their travel and identity documents.

Corresponding National Law or Regulation

The only provision of law touching upon accommodation for domestic workers is as follows: Clause 8(b) of the Sectoral Determination provides that an employer may not make any deduction from a domestic worker's pay except a deduction of not more than 10% of the wage for a room or other accommodation supplied to the domestic worker by the employer if the accommodation:

- (i) is weatherproof and generally kept in good condition;
- (ii) has at least one window and door, which can be locked;
- (iii) has a toilet and bath or shower, if the domestic worker does not have access to any other bathroom.

Law or Regulation covering other workers but not domestic workers

Not applicable.

Notes/Recommendations/Analysis

Neither the Sectoral Determination nor the BCEA contains any provisions which specifically deal with the provision and standard of accommodation, to be provided to domestic workers where so agreed between the employer and domestic worker.

It would be advisable for South African legislators to implement measures that deal in detail with when accommodation should be provided, the standard of accommodation that should be provided, irrespective of whether the worker pays for such accommodation or not, as well as the worker's duties during any period of rest or leave where the worker lives on the employer's premises.

In addition, measures should be implemented to ensure that workers are entitled to keep their travel and identity documents in their personal possession at all times.

Article 10 ILO Convention Provision

WORKING TIME

1. Equal treatment between domestic workers and workers in relation to normal hours of work, overtime compensation, periods of daily and weekly rest and paid annual leave.
2. Weekly rest shall be at least 24 consecutive hours.
3. Periods when domestic workers are not free to dispose of their time and remain at the disposal of the employer are regarded as part of the hours of work.

Corresponding National Law or Regulation

The LRA defines “working hours” as those hours during which an employee is obliged to work.

According to the Sectoral Determination “day” means, for the purposes of measuring hours of work, a period of 24 hours measured from the time when the domestic worker normally commences work.

The Sectoral Determination defines “full pay” as wages, overtime pay, allowances and any other payment in money that a domestic worker is entitled to in consequence of their employment.

“Ordinary hours of work” means the hours of work permitted in terms of clause 10 of the Sectoral Determination.

The Sectoral Determination defines “overtime” as the time that the domestic worker works during a day or in a week in excess of ordinary hours of work.

Furthermore, “paid leave” is defined as any annual leave, paid sick leave or family responsibility leave that a domestic worker is entitled to in terms of Part E of this determination as provided for in the Sectoral Determination.

The BCEA defines “ordinary hours of work” as the hours of work permitted in terms of section 9 or in terms of any agreement in terms of sections 11 or 12.

“Overtime” is taken to mean the time that an employee works during a day or a week in excess of ordinary hours of work in terms of the BCEA.

Part D of the Sectoral Determination deals with the work hours of domestic workers.

CLAUSE 10 of the Sectoral Determination provides that an employer may not require or permit a domestic worker to work more than:

- a. 45 hours in any week; and

- b. 9 hours on any day if the domestic worker works for five days or less in a week; or
- c. 8 hours on any day if the domestic worker works more than 5 days in any week.

CLAUSE 11 of the Sectoral Determination provides that an employer may not require or permit a domestic worker:

- a. to work overtime except in accordance with an agreement concluded by the employer and the domestic worker;
- b. to work more than 15 hours' overtime a week; or
- c. to work more than 12 hours, including overtime, on any day.

Overtime by domestic workers is dealt with in clause 12 of the Sectoral Determination, which states that

1. An employer must pay a domestic worker at least one and one-half times the domestic worker's wage for overtime worked.
2. Despite sub-clause 1., an agreement may provide for an employer to
 - i. pay a domestic worker not less than the domestic worker's ordinary wage for overtime worked and grant the domestic worker at least 30 minutes' time off on full pay for every hour of overtime worked; or
 - ii. grant a domestic worker at least 90 minutes' paid time off for each hour of overtime worked.
3.
 - a. An employer must grant paid time off in terms of sub-clause 2. within one month of the domestic worker becoming entitled to it.
 - b. An agreement in writing may increase the period contemplated by paragraph a. to twelve months.
 - c. An agreement concluded in terms of paragraph b. with a domestic worker when the domestic worker commences employment, or during the first three months of employment, is only valid for one year.
4. Any time worked on a Sunday or public holiday must be paid in accordance with the provisions for Sundays and public holidays in clauses 17 and 18.

CLAUSE 16 of the Sectoral Determination provides

1. that an employer must grant a domestic worker:
 - (a) a daily rest period of at least 12 consecutive hours between ending work and starting work the next day;
 - (b) a weekly rest period of at least 36 consecutive hours which, unless otherwise agreed, must include a Sunday.
2. A daily rest period in terms of sub-clause 1(a) may, by written agreement, be reduced to 10 hours for a domestic worker:
 - (a) who lives where his or her workplace is situated; and
 - (b) whose meal interval lasts for at least three hours.
3. Despite sub-clause 1(b), an agreement in writing may provide for a rest period of at least 60 consecutive hours every second week.

CLAUSE 19 of the Sectoral Determination provides that

1. An employer must grant a domestic worker:
 - (a) at least three weeks annual leave on full pay in respect of each 12 months of employment (the 'annual leave cycle');
 - (b) by agreement, at least one day of annual leave on full pay for every 17 days on which the domestic worker worked or was entitled to be paid; or
 - (c) by agreement, one hour of annual leave on full pay for every 17 hours on which the domestic worker worked or was entitled to be paid.
2. An employer must grant a domestic worker an additional day of paid leave if a public holiday falls on a day during a domestic worker's annual leave on which the domestic worker would otherwise have worked.
3. An employer may reduce a domestic worker's entitlement to annual leave by the number of days of occasional leave on full pay granted to the domestic worker at the domestic worker's request in that annual leave cycle.
4. An employer must grant:
 - (a) at least three weeks annual leave on full pay in respect of each 12 months of employment (the 'annual leave cycle') not later than six months after the end of the annual leave cycle or the year in which the leave was earned;
 - (b) the leave earned in one year over a continuous period, if requested by the domestic worker.

5. Annual leave must be taken:
 - (a) in accordance with an agreement between the employer and employee; or
 - (b) if there is no agreement in terms of paragraph (a), at a time determined by the employer in accordance with this section.
6. An employer may not require or permit an employee to take annual leave during:
 - (a) any other period of leave to which the employee is entitled in terms of this Chapter; or
 - (b) any period of notice of termination of employment.
7. An employer may not require or permit a domestic worker to work for the employer during any period of annual leave.
8. An employer may not pay a domestic worker instead of granting paid leave in terms of this clause, except on termination of employment in terms of clause 25.
9. An employer must pay a domestic worker leave pay at least equivalent to the full pay the domestic worker would receive for working for a period equal to the period of leave calculated on the basis of the domestic worker's rate of pay immediately before the period of leave.
10. Leave pay in terms of clause 9. must be calculated on the basis of the domestic worker's rate of pay immediately before the period of leave.
11. An employer must pay a domestic worker's leave pay before the beginning of the period of leave.

The ordinary working hours of workers are set forth in section 9 of the BCEA stating that:

1. Subject to this Chapter, an employer may not require or permit an employee to work more than:
 - (a) 45 hours in any week; and
 - (b) nine hours in any day if the employee works for five days or fewer in a week; or
 - (c) eight hours in any day if the employee works on more than five days in a week.
2. An employee's ordinary hours of work in terms of subsection 1. may by agreement be extended by up to 15 minutes in a day but not more

than 60 minutes in a week to enable an employee whose duties include serving members of the public to continue performing those duties after the completion of ordinary hours of work.

3. Schedule 1 establishes procedures for the progressive reduction of the maximum ordinary hours of work to a maximum of 40 ordinary hours of work per week and eight ordinary hours of work per day.

Section 10 of the BCEA deals with overtime providing that

1. Subject to this Chapter, an employer may not require or permit an employee:
 - (a) to work overtime except in accordance with an agreement;
 - (b) to work more than
 - i. three hours' overtime a day; or
 - ii. ten hours' overtime a week.
2. An employer must pay an employee at least one and one-half times the employee's wage for overtime worked.
3. Despite subsection 2., an agreement may provide for an employer to
 - (a) pay an employee not less than the employee's ordinary wage for overtime worked and grant the employee at least 30 minutes' time off on full pay for every hour of overtime worked; or
 - (b) grant an employee at least 90 minutes' paid time off for each hour of overtime worked.
4.
 - (a) An employer must grant paid time off in terms of subsection 3. within one month of the employee becoming entitled to it.
 - (b) An agreement in writing may increase the period contemplated by paragraph (a) to 12 months.
5. An agreement concluded in terms of subsection 1. with an employee when the employee commences employment, or during the first three months of employment, lapses after one year.

Periods of daily and weekly rest are addressed in section 15 of the BCEA holding that

1. An employer must allow an employee:
 - (a) a daily rest period of at least twelve consecutive hours between ending and recommencing work; and
 - (b) a weekly rest period of at least 36 consecutive hours which, unless otherwise agreed, must include Sunday.

2. A daily rest period in terms of subsection 1.(a) may, by written agreement, be reduced to 10 hours for an employee:
 - (a) who lives on the premises at which the workplace is situated; and
 - (b) whose meal interval lasts for at least three hours.
3. Despite subsection (1)(b), an agreement in writing may provide for:
 - (a) a rest period of at least 60 consecutive hours every two weeks; or
 - (b) an employee's weekly rest period to be reduced by up to eight hours in any week if the rest period in the following week is extended equivalently.

Paid annual leave is set forth in section 21 of the BCEA holding that

1. An employer must pay an employee leave pay at least equivalent to the remuneration that the employee would have received for working for a period equal to the period of annual leave, calculated:
 - (a) at the employee's rate of remuneration immediately before the beginning of the period of annual leave; and
 - (b) in accordance with section 35.
2. An employer must pay an employee leave pay:
 - (a) before the beginning of the period of leave; or
 - (b) by agreement, on the employee's usual pay day.

Law or Regulation covering other workers but not domestic workers

Not applicable.

Notes/Recommendations/Analysis

In connection with hours of work: the Sectoral Determination covers in detail the amount of normal hours a domestic worker may work per day and per week, the maximum amount of overtime that may be worked, payment for any overtime worked, night work, and periods of standby.

In connection with leave: the Sectoral Determination covers in detail the various types of leave domestic workers are entitled to (annual leave, sick leave, family responsibility leave, and maternity leave), when and how leave may be taken, and the amount of leave a domestic worker is entitled to.

In connection with rest periods: the Sectoral Determination covers in detail the daily and weekly rest period which employers should provide domestic workers with, and payment for work on Sundays and public holidays.

Article 10(2) of the Convention stipulates that employers should grant domestic workers a weekly rest period of at least 24 consecutive hours. This is less than the 36 consecutive hours per week, or by agreement 60 consecutive hours every second week, as provided for in the Sectoral Determination.

The aforesaid provisions regarding hours of work, leave and rest periods are all in line with the provisions applicable to all other employees in terms of the BCEA.

Furthermore, the Sectoral Determination complies with all the issues concerning hours of work, leave and rest periods as proposed by the Convention.

However, measures should be implemented to ensure that any time spent by a domestic worker accompanying members of the household on holiday is not deducted from the worker's annual leave entitlement.

In addition, South African legislation does not deal with the worker's duties during any period of rest or leave where the worker lives on the employer's premises and thus steps should be implemented to ensure that workers who do reside in the households of their employers are not obliged to remain in the household, or with household members, during any period of daily and weekly rest, or during the worker's annual leave period.

Article 11 **ILO Convention Provision**

WAGE

Domestic workers enjoy minimum wage coverage where such coverage exists and without discrimination based on sex.

Corresponding National Law or Regulation

The Sectoral Determination defines "wage" as the amount of money paid or payable to a domestic worker in respect of ordinary hours of work or, if shorter, the hours a domestic worker normally works in a day or week.

The BCEA defines "remuneration" as any payment in money or in kind, or both in money and in kind, made or owing to any person in return for that person working for any other person, including the State, and "remunerate" has a corresponding meaning.

The BCEA defines "wage" as the amount of money paid or payable to an employee in respect of ordinary hours of work or, if shorter, the hours an employee ordinarily works in a day or week.

The Sectoral Determination covers wages in Part B. Clause 2 states that

1. With effect from 1 November 2002, an employer must pay a domestic worker at least the minimum wage prescribed in this clause.

2. An employer must pay a domestic worker who works more than 27 ordinary hours of work per week
 - (a) at least the weekly or monthly wage set out in Table 1; or
 - (b) by agreement between the employer and domestic worker, at least the hourly rate set out in Table 1 for every hour or part of an hour that the domestic worker works.
3. An employer must pay a domestic worker who works 27 or less ordinary hours of work per week:
 - (a) at least the weekly or monthly wage set out in Table 2;
 - (b) by agreement between the employer and domestic worker, at least the hourly rate set out in Table 2 for every hour or part of an hour that the domestic worker works.
4. A domestic worker who works for less than four hours on any day must be paid for four hours' work on that day.

The payment of remuneration is dealt with in section 32 of the BCEA as set out more fully in Article 12 (Payment in Kind) below.

The way in which remuneration and wages is calculated is dealt with in section 35 of the BCEA as set out more fully in Article 12 (Payment in Kind) below.

Chapter 2 of the Employment Equity Act ("**EEA**") deals with the prohibition of unfair discrimination. Section 5 of the EEA states specifically that every employer must take steps to promote equal opportunity in the workplace by eliminating unfair discrimination in any employment policy or practice.

Section 6 of the EEA holds that

1. No person may unfairly discriminate, directly or indirectly, against an employee, in any employment policy or practice, on one or more grounds, including race, gender, sex, pregnancy, marital status, family responsibility, ethnic or social origin, colour, sexual orientation, age, disability, religion, HIV status, conscience, belief, political opinion, culture, language and birth.
2. It is not unfair discrimination to
 - (a) take affirmative action measures consistent with the purpose of this Act; or
 - (b) distinguish, exclude or prefer any person on the basis of an inherent requirement of a job.
3. Harassment of an employee is a form of unfair discrimination and is prohibited on any one, or a combination of grounds of unfair discrimination listed in subsection 1.

For the purposes of the EEA an “employee” means any person other than an independent contractor who-

- a. works for another person or for the State and who receives, or is entitled to receive, any remuneration; and
- b. in any manner assists in carrying on or conducting the business of an employer, and ‘employed’ and ‘employment’ have corresponding meanings.

Law or Regulation covering other workers but not domestic workers

Not applicable.

Notes/Recommendations/Analysis

The Sectoral Determination provides for minimum wages to be paid to domestic workers. As South African legislation does not expressly address any distinction between workers on the basis of sex, it can be read that workers are entitled to minimum wages regardless of a domestic worker’s sex. Therefore, South African legislation is in compliance with the Convention.

At present the only recourse available to any employee who falls victim to unfair discrimination is to refer the matter to the labour court for adjudication. More accessible complaint mechanisms need to be made available to domestic workers where such abuse, harassment or violence does occur.

Article 12 ILO Convention Provision

PAYMENT IN KIND

1. Domestic workers shall be paid directly in cash at regular intervals at least once a month. Unless provided for by national laws, regulations or collective agreements, payment may be made by bank transfer, bank cheque, postal cheque, money order or other lawful means of monetary payment, with the consent of the worker concerned.
2. National laws, regulations, collective agreements or arbitration awards may provide for the payment of a limited proportion of the remuneration of domestic workers in the form of payments in kind that are not less favourable than those generally applicable to other categories of workers, provided that measures are taken to ensure that such payments in kind are agreed to by the worker, are for the personal use and benefit of the worker, and that the monetary value attributed to them is fair and reasonable.

Corresponding National Law or Regulation

The Sectoral Determination defines “wage” as the amount of money paid or payable to a domestic worker in respect of ordinary hours of work or, if they are shorter, the hours a domestic worker normally works in a day or week.

The BCEA defines “remuneration” as any payment in money or in kind, or both in money and in kind, made or owing to any person in return for that person working for any other person, including the State, and “remunerate” has a corresponding meaning.

The BCEA defines “wage” as the amount of money paid or payable to an employee in respect of ordinary hours of work or, if they are shorter, the hours an employee ordinarily works in a day or week.

The Sectoral Determination deals with wages in Part B as set out more fully in Article 11 (Wage) above.

Clause 7 of the Sectoral determination deals with prohibited acts concerning pay and states that

1. An employer may not receive any payment directly or indirectly, or withhold any payment from a domestic worker in respect of:
 - (a) the employment or training of that domestic worker;
 - (b) the supply of any work equipment or tools;
 - (c) the supply of any work clothing; or
 - (d) any food supplied to the domestic worker while the domestic worker is working or is at the workplace.
2. An employer may not require a domestic worker to purchase any goods from the employer or from any person, shop or other business nominated by the employer.
3. An employer may not levy a fine against a domestic worker.
4. An employer may not require or permit a domestic worker to:
 - (a) repay any pay except for overpayments previously made by the employer resulting from an error in calculating the domestic worker’s pay; or
 - (b) acknowledge receipt of an amount greater than the pay actually received.

Clause 8 of the Sectoral Determination addresses deductions and holds that an employer may not make any deduction from a domestic worker’s pay except:

- a. a deduction, calculated on the basis of the domestic worker’s wage, proportionate to the length of any period that the domestic

worker is absent from work, other than an absence on paid leave or at the instance of the employer;

- b. deduction of not more than 10% of the wage for a room or other accommodation supplied to the domestic worker by the employer if the accommodation:
 - i. is weatherproof and generally kept in good condition;
 - ii. has at least one window and door, which can be locked;
 - iii. has a toilet and bath or shower, if the domestic worker does not have access to any other bathroom.
- c. with the written consent of the domestic worker, a deduction of any amount which the employer has paid or has undertaken to pay
 - i. to any holiday, sick, medical, insurance, savings, provident or pension fund of which the domestic worker is a member;
 - ii. to any registered trade union in respect of subscriptions;
 - iii. to any banking institution, building society, insurance business, registered financing institution or local authority in respect of a payment on a loan granted to the domestic worker to acquire a dwelling;
 - iv. to any person or organisation in respect of the rent of a dwelling or accommodation occupied by the domestic worker;
- d. a deduction, not exceeding one-tenth of the wage due to the domestic worker on the pay-day concerned, towards the repayment of any amount loaned or advanced to the domestic worker by the employer; or
- e. a deduction of any amount which an employer is required to make by law or in terms of a court order or arbitration award.

Part C of the Sectoral Determination deals with the particulars of employment and states that the written particulars of employment of a worker should set out any payment in kind that the domestic worker is entitled to and the value of the payment in kind.

Section 29(1)(i) of the BCEA states that an employer must supply an employee, when the employee commences employment, with the following particulars in writing, namely any payment in kind that the employee is entitled to and the value of the payment in kind.

The payment of remuneration is dealt with in section 32 of the BCEA stating that

1. An employer must pay to an employee any remuneration that is paid in money:

- (a) in South African currency;
 - (b) daily, weekly, fortnightly or monthly; and
 - (c) in cash, by cheque or by direct deposit into an account designated by the employee.
2. Any remuneration paid in cash or by cheque must be given to each employee:
- (a) at the workplace or at a place agreed to by the employee;
 - (b) during the employee's working hours or within 15 minutes of the commencement or conclusion of those hours; and
 - (c) in a sealed envelope which becomes the property of the employee.
3. An employer must pay remuneration not later than seven days after:
- (a) the completion of the period for which the remuneration is payable; or
 - (b) the termination of the contract of employment.
4. Subsection 3.(b) does not apply to any pension or provident fund payment to an employee that is made in terms of the rules of the fund.

Deductions and other acts concerning remunerations is dealt with in section 34 of the BCEA stating that:

1. An employer may not make any deduction from an employee's remuneration unless
- (a) subject to subsection 2., the employee in writing agrees to the deduction in respect of a debt specified in the agreement; or
 - (b) the deduction is required or permitted in terms of a law, collective agreement, court order or arbitration award.
2. A deduction in terms of subsection 1.(a) may be made to reimburse an employer for loss or damage only if:
- (a) the loss or damage occurred in the course of employment and was due to the fault of the employee;
 - (b) the employer has followed a fair procedure and has given the employee a reasonable opportunity to show why the deductions should not be made;
 - (c) the total amount of the debt does not exceed the actual amount of the loss or damage; and
 - (d) the total deductions from the employee's remuneration in

terms of this subsection do not exceed one-quarter of the employee's remuneration in money.

3. A deduction in terms of subsection 1.(a) in respect of any goods purchased by the employee must specify the nature and quantity of the goods.
4. An employer who deducts an amount from an employee's remuneration in terms of subsection 1. for payment to another person must pay the amount to the person in accordance with the time period and other requirements specified in the agreement, law, court order or arbitration award.
5. An employer may not require or permit an employee to:
 - (a) repay any remuneration except for overpayments previously made by the employer resulting from an error in calculating the employee's remuneration; or
 - (b) acknowledge receipt of an amount greater than the remuneration actually received.

The way in which remuneration and wages is calculated is dealt with in section 35 setting out that

1. An employee's wage is calculated by reference to the number of hours the employee ordinarily works.
2. For the purposes of calculating the wage of an employee by time, an employee is deemed ordinarily to work:
 - (a) 45 hours in a week, unless the employee ordinarily works a lesser number of hours in a week;
 - (b) nine hours in a day, or seven and a half hours in the case of an employee who works for more than five days a week, or the number of hours that an employee works in a day in terms of an agreement concluded in accordance with section 11, unless the employee ordinarily works a lesser number of hours in a day.
3. An employee's monthly remuneration or wage is four and one-third times the employee's weekly remuneration or wage, respectively.
4. If an employee's remuneration or wage is calculated, either wholly or in part, on a basis other than time or if an employee's remuneration or wage fluctuates significant from period to period, any payment to that employee in terms of this Act must be

calculated by reference to the employee's remuneration or wage during:

- (a) the preceding 13 weeks; or
 - (b) if the employee has been in employment for a shorter period, that period.
5. For the purposes of calculating an employee's annual leave pay in terms of section 21, notice pay in terms of section 38 or severance pay in terms of section 41, an employee's remuneration:
- (a) includes the cash value of any payment in kind that forms part of the employee's remuneration unless the employee receives that payment in kind; but
 - (b) excludes
 - i. gratuities;
 - ii. allowances paid to an employee for the purposes of enabling an employee to work; and
 - iii. any discretionary payments not related to the employee's hours of work or work performance.

Law or Regulation covering other workers but not domestic workers

Not applicable.

Notes/Recommendations/Analysis

The Sectoral Determination provides detailed provisions as to how wages are to be calculated. Workers are to be paid in South African currency daily, weekly, fortnightly or monthly, and in cash, by cheque or by direct deposit into an account designated by the domestic worker. An employer must pay a domestic worker on the normal pay day as agreed to by the worker.

An employer may not receive any payment from a domestic worker, or withhold any payment from a domestic worker, in respect of the supply of any work equipment or tools or the supply of any work clothing.

Where a deduction is so agreed, an employer may not deduct more than 10% of a domestic worker's wages for accommodation supplied by the employer to the worker.

On every pay day the employer must provide the domestic worker with a written statement on which the following should be indicated: the employer's name and address; the domestic worker's name and occupation; the period in respect of which payment is made; the worker's wage rate and overtime rate; the number of ordinary hours worked by the worker during the period for which payment is

made; the number of overtime hours worked by the worker during the period for which payment is made; the number of hours worked by the worker on a public holiday or Sunday; the worker's wage; details of any other pay arising out of the domestic workers' employment; details of any deductions made from the worker's wage; and the actual amount paid to the domestic worker.

It is recommended that national laws, regulations, or other means of enforcement should provide for the payment of only a limited and defined proportion of a domestic worker's remuneration in the form of payments in kind.

Furthermore, payments in kind should only be effected where the domestic worker agreed thereto, in which event the payment in kind should be for the personal use and benefit of the worker. The monetary value attributed to payments in kind should also be fair and reasonable.

Article 13 ILO Convention Provision

OCCUPATIONAL SAFETY AND HEALTH

Right to a safe and healthy working environment, ensuring the occupational safety and health of domestic workers.

Corresponding National Law or Regulation

The Occupational Health and Safety Act No. 85 of 1993 ("**OHSA**") covers the general duties of employers to their employees, stating:

1. Every employer shall provide and maintain, as far as is reasonably practicable, a working environment that is safe and without risk to the health of his employees.
2. Without derogating from the generality of an employer's duties under subsection 1., the matters to which those duties refer include in particular:
 - (a) the provision and maintenance of systems of work, plant and machinery that, as far as is reasonably practicable, are safe and without risks to health;
 - (b) taking such steps as may be reasonably practicable to eliminate or mitigate any hazard or potential hazard to the safety or health of employees, before resorting to personal protective equipment;
 - (c) making arrangements for ensuring, as far as is reasonably practicable, the safety and absence of risks to health in connection with the production, processing, use, handling, storage or transport of articles or substances;

- (d) establishing, as far as is reasonably practicable, what hazards to the health or safety of persons are attached to any work which is performed, any article or substance which is produced, processed, used, handled, stored or transported and any plant or machinery which is used in his business, and he shall, as far as is reasonably practicable, further establish what precautionary measures should be taken with respect to such work, article, substance, plant or machinery in order to protect the health and safety of persons, and he shall provide the necessary means to apply such precautionary measures;
- (e) providing such information, instructions, training and supervision as may be necessary to ensure, as far as is reasonably practicable, the health and safety at work of his employees;
- (f) as far as is reasonably practicable, not permitting any employee to do any work or to produce, process, use, handle, store or transport any article or substance or to operate any plant or machinery, unless the precautionary measures contemplated in paragraphs (b) and (d), or any other precautionary measures which may be prescribed, have been taken;
- (g) taking all necessary measures to ensure that the requirements of this Act are complied with by every person in his employment or on premises under his control where plant or machinery is used;
- (h) enforcing such measures as may be necessary in the interest of health and safety;
- (i) ensuring that work is performed and that plant or machinery is used under the general supervision of a person trained to understand the hazards associated with it and who have the authority to ensure that precautionary measures taken by the employer are implemented; and
- (j) causing all employees to be informed regarding the scope of their authority as contemplated in section 37 1.(b).

Section 7 of the BCEA deals with the regulation of working time and holds that every employer must regulate the working time of each employee:

- a. in accordance with the provisions of any Act governing occupational health and safety;
- b. with due regard to the health and safety of employees;

- c. with due regard to the Code of Good Practice on the Regulation of Working Time issued under section 87(1)(a); and
- d. with due regard to the family responsibilities of employees.

Law or Regulation covering other workers but not domestic workers

Domestic workers working in private households are excluded from the provisions of the Compensation for Occupational Injuries and Diseases Act No. 130 of 1993. This Act provides for compensation for disablement caused by occupational injuries or diseases sustained or contracted by employees in the course of their employment, or for death resulting from such injuries or diseases and provides for matters connected therewith.

Notes/Recommendations/Analysis

The OHSA addresses various issues concerning the health and safety of employees in any workplace, including domestic households. The Act states that every employer shall provide and maintain, as far as reasonably practicable, a working environment that is safe and without risks to the health of employees.

However, the OHSA provisions are mainly applicable to formal, larger employers, employing various employees. Although domestic employers and domestic workers fall within the ambit of the Act, the health and safety measures of the Act are not all appropriate or applicable to the household environment. Further health and safety measures applicable specifically to the household environment are therefore required.

It is recommended that regulations and requirements specific to domestic work should be drafted to eliminate or minimize work-related hazards and risks in order to prevent injuries, diseases and deaths and to promote occupational safety and health in the household workplace. These measures and requirements should be identified and listed and should be applicable specific to the domestic employment sector.

Article 14 ILO Convention Provision

SOCIAL SECURITY

Domestic workers enjoy conditions that are not less favourable than those applicable to workers in respect of social security protection, including with respect to maternity.

Corresponding National Law or Regulation

Section 3 of the Unemployment Insurance Act No 63 of 2001 ("UIA") applies to all employers and employees, other than:

- a. employees employed for less than 24 hours a month with a particular employer, and their employers;
- b. employees under a contract of employment contemplated in section 18 (2) of the Skills Development Act, 1998 (Act 97 of 1998), and their employers;
- c. employees in the national and provincial spheres of government who are officers or employees as defined in section 1 (1) of the Public Service Act, 1994 (Proclamation 103 of 1994), and their employers; and
- d. persons who enter the Republic for the purpose of carrying out a contract of service, apprenticeship or learnership within the Republic if upon the termination thereof the employer is required by law or by the contract of service, apprenticeship or learnership, as the case may be, or by any other agreement or undertaking, to repatriate that person, or that person is so required to leave the Republic, and their employers.

Part D of the UIA deals with maternity benefits. More particularly, section 24 sets out the right to maternity benefits stating that:

- 1. Subject to section 14, a contributor who is pregnant is entitled to the maternity benefits contemplated in this Part for any period of pregnancy or delivery and the period thereafter, if application is made in accordance with prescribed requirements and the provisions of this Part.
- 2. ...[provision deleted]
- 3. When taking into account any maternity leave paid to the contributor in terms of any other law or any collective agreement or contract of employment, the maternity benefit may not be more than the remuneration the contributor would have received if the contributor had not been on maternity leave.
- 4. For purposes of this section the maximum period of maternity leave is 32 weeks.
- 5. A contributor who has a miscarriage during the third trimester or bears a still-born child is entitled to a maximum maternity benefit of six weeks after the miscarriage or stillbirth.

Section 25 of the UIA deals with application for maternity benefits and holds that:

- 1. An application for maternity benefits must be made in the prescribed form at an employment office at least eight weeks before childbirth.

2. The Commissioner may, on good cause shown:
 - (a) accept an application after the period of eight weeks referred to in subsection 1.;
 - (b) extend the period of submission of the application up to a period of six months after the date of childbirth.
3. The claims officer must investigate the application and, if necessary, request further information.
4. If the application complies with the provisions of this Chapter, the claims officer must:
 - (a) approve the application;
 - (b) determine:
 - i. the amount of the benefit for purposes of section 13 (3);
 - ii. the benefits the applicant is entitled to in terms of section 13 (4); and
 - (c) stipulate how the benefits are to be paid.
5. If the application does not comply with the provisions of this Chapter, the claims officer must advise the applicant in writing that the application is defective and of the reasons why it is defective.

Payment of maternity benefits is dealt with in section 26 of the UIA holding that the Director-General must pay the maternity benefits to the contributor at the employment office at which the application was made or any other employment office determined by the applicant at the time of application.

The Sectoral Determination deals with maternity leave in clause 22 stating that

1. A domestic worker is entitled to at least four consecutive months' maternity leave.
2. A domestic worker may commence maternity leave:
 - (a) at any time from four weeks before the expected date of birth, unless otherwise agreed; or
 - (b) on a date from which a medical practitioner or a midwife certifies that it is necessary for the domestic worker's health or that of her unborn child.
3. A domestic worker may not work for six weeks after the birth of her child, unless a medical practitioner or midwife certifies that she is fit to do so.

4. A domestic worker who has a miscarriage during the third trimester of pregnancy or bears a stillborn child is entitled to maternity leave for six weeks after the miscarriage or stillbirth, whether or not the domestic worker had commenced maternity leave at the time of the miscarriage or stillbirth.
5. A domestic worker must notify an employer in writing, unless the domestic worker is unable to do so, of the date on which the domestic worker intends to:
 - (a) commence maternity leave; and
 - (b) return to work after maternity leave.
6. Notification in terms of sub-clause (5) must be given:
 - (a) at least four weeks before the domestic worker intends to commence maternity leave;
 - (b) if it is not reasonably practicable to do so, as soon as is reasonably practicable.
7. No employer may require or permit a pregnant domestic worker or a domestic worker who is nursing her child to perform work that is
 - (a) hazardous to her health or the health of her child.

Section 25 of the BCEA deals with maternity leave and holds that

1. An employee is entitled to at least four consecutive months' maternity leave.
2. An employee may commence maternity leave:
 - (a) at any time from four weeks before the expected date of birth, unless otherwise agreed; or
 - (b) on a date from which a medical practitioner or a midwife certifies that it is necessary for the employee's health or that of her unborn child.
3. No employee may work for six weeks after the birth of her child, unless a medical practitioner or midwife certifies that she is fit to do so.
4. An employee who has a miscarriage during the third trimester of pregnancy or bears a stillborn child is entitled to maternity leave for six weeks after the miscarriage or stillbirth, whether or not the employee had commenced maternity leave at the time of the miscarriage or stillbirth.

5. An employee must notify an employer in writing, unless the employee is unable to do so, of the date on which the employee intends to
 - (a) commence maternity leave; and
 - (b) return to work after maternity leave.
6. Notification in terms of subsection (5) must be given:
 - (a) at least four weeks before the employee intends to commence maternity leave; or
 - (b) if it is not reasonably practicable to do so, as soon as is reasonably practicable.
7. The payment of maternity benefits will be determined by the Minister subject to the provisions of the Unemployment Insurance Act, 1966 (Act No. 30 of 1966).

Law or Regulation covering other workers but not domestic workers

Not applicable.

Notes/Recommendations/Analysis

Domestic workers enjoy the same rights in respect to social security protection, including with respect to maternity as all other workers in South Africa.

In terms of section 187(1)(e) of the LRA, the dismissal of an employee on account of her pregnancy, intended pregnancy, or any reason related to her pregnancy, is automatically unfair. The definition of dismissal in section 186 of the LRA includes the refusal to allow an employee to resume work after she has taken maternity leave in terms of any law, collective agreement or her contract.

The UIA provides for various social benefits, such as unemployment, illness, maternity, adoption, and dependant's benefits. All domestic workers, except those employed for less than 24 hours a month with a particular employer, are covered by the social security protection granted by the UIA. Unfortunately those domestic workers who work for more than one employer, less than 24 hours per month per employer, will be excluded from the social protection provided by the UIA as they fall within the aforesaid exclusion.

Another group of employees excluded from the ambit of the UIA are those employees who enter South Africa for the purpose of carrying out a contract of service and who upon the termination of the contract are required to leave South Africa or to be repatriated by the employer upon termination of the contract. Many migrant domestic workers may therefore also be excluded from social security protection if they are required per law to leave South Africa once their employment contracts with their employers terminate.

Although domestic workers are covered by the social protection provided by the UIA, the following area needs to be addressed: Only domestic workers who work 24 hours or more per month for an employer are currently covered by the UIA. This has the unfortunate result that those domestic workers, who work for more than one employer, less than 24 hours per month, are not protected by the UIA.

In the event that South Africa ratifies the Convention it should consider concluding bilateral, regional or multilateral agreements to provide for migrant domestic workers covered by such agreements, equality of treatment in respect of social security.

Article 15 **ILO Convention Provision**

REGULATION OF RECRUITMENT/EMPLOYMENT AGENCIES

Protect domestic workers, including migrant domestic workers, recruited or placed by private employment agencies, from abusive practices.

- (a) Determine conditions governing the operation of private employment agencies;
- (b) Adequate machinery and procedures exist for the investigation of complaints, alleged abuses and fraudulent practices;
- (c) Members, and where appropriate, in collaboration with other members, provide adequate protection for and prevent abuses of domestic workers recruited or placed in their territory by private employment agencies;
- (d) Where workers are recruited to one country for work in another, conclude bilateral, regional or multilateral agreements;
- (e) Fees charged by private employment agencies are not deducted from the remuneration of domestic workers.

Corresponding National Law or Regulation

Clause 29 of the Sectoral Determination covering employment services states that

1. A domestic worker whose services have been provided by an employment service is employed by that employment service for the purposes of this determination if the employment service pays the domestic worker.
2. An employment service contemplated in sub-clause 1. and the client are jointly and severally liable if the employment service, in

respect of a domestic worker who provides services to that client, does not comply with the determination or any provision of the Basic Conditions of Employment Act.

Section 82 of the BCEA covering temporary employment services states that

1. For the purposes of this Act, a person whose services have been procured for, or provided to, a client by a temporary employment service is the employee of that temporary employment service, and the temporary employment service is that person's employer.
2. Despite subsection 1., a person who is an independent contractor is not an employee of a temporary employment service, nor is the temporary employment service the employer of that person.
3. The temporary employment service and the client are jointly and severally liable if the temporary employment service, in respect of any employee who provides services to that client, does not comply with this Act or a sectoral determination.

Law or Regulation covering other workers but not domestic workers

Not applicable.

Notes/Recommendations/Analysis

At present the conduct of private employment agencies (also known as temporary employment services) are not regulated in any detail in South Africa.

It is recommended that in the regulation of the functions of private employment agencies when recruiting and placing domestic workers with employers, and in effectively protecting domestic workers so recruited or placed against abusive practices, specific regulative measures should be put in place to:

- Determine the conditions governing the operation of private employment agencies who recruit or place domestic workers;
- Ensure that adequate procedures exist for the investigation of any complaints, alleged abuses and fraudulent practices concerning the activities of private employment agencies;
- Adopt necessary measures to provide adequate protection for, and prevent abuses of, domestic workers recruited or placed by private employment agencies;
- Where domestic workers are recruited in one country to provide domestic work in another, consider concluding bilateral, regional or multilateral agreements to prevent abuses and fraudulent practices in recruitment, placement and employment practices; and to
- Take measures to ensure that any fees charged by private employment

agencies for their services are not deducted from the remuneration of domestic workers.

- In addition, good practices in respect of private employment agencies should be established and promoted by the South African government.

Article 16 ILO Convention Provision

ACCESS TO DISPUTE SETTLEMENT PROCEDURES

Effective access to courts, tribunals or other dispute resolution mechanisms under conditions that are not less favourable than those available to workers generally.

Corresponding National Law or Regulation

Chapter VII of the LRA covers dispute resolution.

Section 80 of the BCEA sets out the procedure for disputes, stating:

1. If there is a dispute about the interpretation or application of this Part, any party to the dispute may refer the dispute in writing to:
 - (a) a council, if the parties to the dispute fall within the registered scope of that council; or
 - (b) the CCMA, if no council has jurisdiction.
2. The party who refers a dispute must satisfy the council or the CCMA that a copy of the referral has been served on all the other parties to the dispute.
3. The council or the CCMA must attempt to resolve a dispute through conciliation.
4. If a dispute remains unresolved, any party to the dispute may refer it to the Labour Court for adjudication.
5. In respect of a dispute in terms of this Part, the relevant provisions of Part C of Chapter VII of the Labour Relations Act, 1995, apply with the changes required by the context.

Law or Regulation covering other workers but not domestic workers

Not applicable.

Notes/Recommendations/Analysis

The disputes and complaint mechanisms that are available to domestic workers are those general mechanisms available to all other employees in terms of the various pieces of legislation. These mechanisms predominantly include referral

of disputes to the Commission for Conciliation, Mediation and Arbitration (“CCMA”) for conciliation, and depending on the dispute, arbitration; referral to the labour court for adjudication where applicable; and lodging a complaint with the Department of Labour which could subject the employer to an investigation by the Department and the payment of penalties. Therefore, South Africa complies with Article 16 of the Convention.

Article 17 ILO Convention Provision

LABOR INSPECTION

1. Develop and implement measures for labour inspection, enforcement and penalties.
2. Measures shall specify the conditions under which access to household premises may be granted, having due respect for privacy.

Corresponding National Law or Regulation

The functions of labour inspectors are set out in section 64 of the BCEA, stating that

1. A labour inspector appointed under section 63(1) may promote, monitor and enforce compliance with an employment law by:
 - (a) advising employees and employers of their rights and obligations in terms of an employment law;
 - (b) conducting inspections in terms of this Chapter;
 - (c) investigating complaints made to a labour inspector;
 - (d) endeavouring to secure compliance with an employment law by securing undertakings or issuing compliance orders; and
 - (e) performing any other prescribed function.
2. A labour inspector may not perform any function in terms of this Act in respect of an undertaking in respect of which the labour inspector has, or may reasonably be perceived to have, any personal, financial or similar interest.

The powers of entry of labour inspectors are stipulated in section 65 of the BCEA maintaining

1. In order to monitor and enforce compliance with an employment law, a labour inspector may, without warrant or notice, at any reasonable time, enter:
 - (a) any workplace or any other place where an employer carries

- on business or keeps employment records, that is not a home;
 - (b) any premises used for training in terms of the Manpower Training Act, 1981 (Act No. 56 of 1981); or
 - (c) any private employment office registered under section 15 of the Guidance and Placement Act, 1981 (Act No. 62 of 1981).
2. A labour inspector may enter a home or any place other than a place referred to in subsection 1. only:
 - (a) with the consent of the owner or occupier; or
 - (b) if authorised to do so in writing in terms of subsection 3.
 3. The Labour Court may issue an authorisation contemplated in subsection 2. only on written application by a labour inspector who states under oath or affirmation the reasons for the need to enter a place in order to monitor or enforce compliance with any employment law.
 4. If it is practical to do so, the employer and a trade union representative must be notified that the labour inspector is present at a workplace and of the reason for the inspection.

Law or Regulation covering other workers but not domestic workers

Not applicable.

Notes/Recommendations/Analysis

The disputes and complaint mechanisms that are available to domestic workers are those general mechanisms available to all other employees in terms of the various pieces of legislation. These mechanisms predominantly include referral of disputes to the CCMA for conciliation, and depending on the dispute, arbitration; referral to the labour court for adjudication where applicable; and lodging a complaint with the Department of Labour which could subject the employer to an investigation by the Department and the payment of penalties.

It is important to note that at present sections 65(1) to (3) of the BCEA stipulates that labour officials can only have access to the household where the employer so agrees, or where an urgent court order has been obtained.

Measures concerning inspection by government officials of households where domestic workers are employed should be developed and implemented, which measures should have due regard to the special characteristics of domestic work. These measures should specify the conditions under which access to household premises should be granted, having due respect for the privacy of the employer.

Article 18 **ILO Convention Provision**

IMPLEMENTATION

Each Member shall implement the provisions of this Convention, in consultation with the most representative employers and workers organizations, through laws and regulations, as well as through collective agreements or additional measures consistent with national practice, by extending or adapting existing measures to cover domestic workers or by developing specific measures for them, as appropriate.

Corresponding National Law or Regulation

Not applicable.

Law or Regulation covering other workers but not domestic workers

Not applicable.

Notes/Recommendations/Analysis

Most of the provisions contained in the Convention are already addressed in South African legislation, save for a few exceptions. However, once the legislative regime governing the domestic employment sector in South Africa is scrutinised closer it appears as though some of the provisions of the Convention are not properly implemented in practice due to the unique nature of domestic work.

On the one hand, there are various issues that are already addressed in South African legislation, but which are not practically well implemented, such as the freedom of association, child labour, health and safety as well as social security. Whilst on the other hand, issues pertaining to migrant domestic workers, private employment agencies and unique disputes and complaints mechanisms in the domestic sector are presently not addressed at all.

It is very important to note that only a limited number of domestic workers belong to any trade union. The reason for the aforementioned can be found in the LRA in general and more in particular due to the nature of a strike and the definition thereof.

Section 213 of the LRA defines a strike as

“...the partial or complete concerted refusal to work, or the retardation or obstruction of work, by persons who are or have been employed by the same employer or by different employers, for the purpose of remedying a grievance or resolving a dispute in respect of any matter of mutual interest between employer and employee...”

Based on the aforementioned definition it is evident that the reference to “concerted” and “persons” indicates that a single employee cannot embark on a lawful strike. Thus, in terms of the LRA, no industrial action can be embarked upon by most domestic workers since there is an absence of a general body, or bodies, to fight for the plight of domestic workers. This in essence gives rise to the poor organisation of domestic workers, which is of particular concern, even though the legislative regime does afford these rights to domestic workers.

Since many of the rights, as contained in the LRA, focus predominately on formal workplaces, where a number of employees are employed, it seems that the constitutional right to freedom of association and the related rights provided for in the LRA are not always relevant in the domestic employment sector.

In addition, the sheer scope and magnitude when it comes to domestic workers cause additional implementation difficulties of existing legislation. There are hundreds of thousands, if not millions, of individual households where compliance with relevant legislation in the domestic employment sector is required. In practical terms, it poses a hurdle when monitoring compliance and enforcing legislation.

Furthermore, many employers do not comply with the provisions of the Sectoral Determination, and where relevant, the BCEA. This could in part be attributed to the fact that many employers are completely unaware of their legal obligations as far as employment rights are concerned.

Presently domestic workers are subject to the general laws in respect of issues such as the prohibition against unfair dismissal and unfair labour practices as provided for in the LRA. These general laws do not always cater for the unique nature of the domestic employment sector. The right to equality and non-discrimination is also regulated under the normal provisions of the EEA, without any instrument focussing on the domestic sector and unfair discrimination and equality specifically. Unique enforcement and monitoring systems are furthermore required with the view to adequately address disputes in the domestic sector. One reason for the need for such unique enforcement and monitoring systems is the practical difficulty experienced by domestic workers in taking their employers to the CCMA or labour court while still employed by that very employer. The existing enforcement and compliance mechanisms are simply inadequate for protecting the rights of domestic workers.

One cannot dispute that, due to its unique nature, the domestic employment sector is difficult to regulate properly. However, based on the current legislative regime South Africa complies broadly with the Convention.

If South Africa wishes to become one of the first countries to ratify the Convention, the South African government needs to be proactive in this regard and also engage in consultation with the South African Domestic Service and Allied Workers' Union (SADSAWU) as well as other representative organisations.

CHILE

Article 1 ILO Convention Provision

For the purpose of the Convention:

- (a) The term “domestic work” means work performed in or for a household or households;
- (b) The term “domestic worker” means any person engaged in domestic work within an employment relationship;
- (c) A person who performs domestic work only occasionally or sporadically and not on an occupational basis is not a domestic worker.

Corresponding National Law or Regulation

In Chile, domestic workers are called “private household employees” (“trabajadores de casa particular”).

The Law defines employees as: “all natural persons that provide personal, intellectual or material services, under dependency or subordination, and by virtue of an employment contract”. (Article 3, Labour Code).

For its part, Article 146 of the Labour Code defines private household employees as those “natural persons that are dedicated permanently, full or part time, to the service of one or more natural persons or a family, in cleaning tasks or works that are inherent to the household”.

Next, the definition is broadened to indicate that “those persons that carry out works equal or similar to those indicated in the previous paragraph in charitable institutions whose purpose is to attend persons with special needs of protection or assistance, providing them the benefits inherent to a home, are also considered employees subject to the special norms of this chapter”.

Law or Regulation covering other workers but not domestic workers

Domestic workers are specifically defined in the Labour Code (see above).

Notes/Recommendations/Analysis

Not applicable.

Article 3 **ILO Convention Provision**

FREEDOM OF ASSOCIATION AND RIGHT TO COLLECTIVE BARGAINING

1. Each member shall take measures to ensure the effective promotion and protection of the human rights of all domestic workers, as set out in this Convention.
2. Promote and realize the fundamental principles and rights at work such as collective bargaining, elimination of all forms of forced or compulsory labour, and abolition of child labour.
3. Protect the right of domestic workers and employers of domestic workers to join organizations, federations and confederations of their own choosing.

Corresponding National Law or Regulation

Chilean law assures all employees the freedom to join a union (Article 19, N° 16 of the Political Constitution of the Republic).

With regard to the protection of human rights, Article 5 of the Labour Code expressly provides that the exercise of the faculties of the employer “is limited by the respect for the constitutional guarantees of the employees, in particular, when they may affect their intimacy, private life or honour”.

The law prohibits forced labour. Article 9 of the Labour Code indicates that the agreement must be consensual.

Regarding minors, Article 13 of the Labour Code provides that persons over 18 years have the capacity to enter into an employment contract, but those persons between 15 and 18 years may perform light work that does not affect their health, with prior authorization of their parents or legal guardians. They must have concluded secondary education or if they are undertaking primary or secondary education, the work should not interfere with their studies, therefore, their contracts should not be extended for more than 30 hours per week or 8 hours per day.

Law or Regulation covering other workers but not domestic workers

The right to join or organize unions is a constitutional right. However, Chilean law does not expressly protect domestic workers' right to join or organize unions.

Unions of companies with one employer may exercise the right of collective bargaining. However, for intercompany unions, which are formed or joined by workers of diverse employers, such as the case of domestic workers, collective

bargaining is voluntary for the employer, and they generally refuse to participate in such processes. Therefore, in practice, intercompany unions have no collective bargaining power.

The reason why domestic workers join intercompany unions, is that they are unable to meet the minimum legal quorum (8 workers) to form a company union with their respective employers.

Notes/Recommendations/Analysis

Not applicable.

Article 4 ILO Convention Provision

CHILD LABOUR

1. Minimum age of domestic worker is:
 - a. consistent with the provisions of the Minimum Age Convention, 1973 and Worst Forms of Child Labour Convention (1999);
 - b. age of domestic worker should not be lower than that established by national laws and regulations for workers generally.
2. Domestic workers who are under the age of 18 and above the minimum age of employment are not deprived of compulsory schooling, further education or vocational training.

Corresponding National Law or Regulation

- 1a. Effectively, the minimum age to work in Chile is consistent with the Convention, as stated in Article 13 of the Labour Code.
- 1b. In the case of domestic workers, the general rule applies, that is, they must be 18 years.
2. Chilean law prohibits minors of 18 years to work in activities without evidencing that they have previously concluded their secondary education.

Law or Regulation covering other workers but not domestic workers

As noted above, the age limit that applies to all employees also applies to domestic workers.

Notes/Recommendations/Analysis

The minimum age protections required under this Article are already reflected in the Labour Code.

Article 5 ILO Convention Provision

Enjoy effective protection against all forms of abuse, harassment and violence.

Corresponding National Law or Regulation

Chilean law protects against all discriminatory acts, abuse or infringements of constitutional rights (life and physical and psychological integrity; private life and honour; privacy of communications; liberty of conscience, opinion and work, through a special procedure regulated in the Labour Code (see Article 485), that allows for a complaint to be made by the employee during the term of the labour relationship or due to the termination of the same, in a procedure named “tutela” (claim to uphold constitutional rights).

During the labour relationship, the procedure contemplates a rapid administrative investigation, following which a pronouncement must be made upon the existence of such abusive or injurious acts:

1. In the negative case, the process concludes without sanctions;
2. If violations are evidenced, the employee and employer are summoned to a voluntary mediation.
 - (a) Where an agreement is reached, the procedure concludes, but it may be reactivated in the case of a breach of the agreement.
 - (b) Where an agreement cannot be reached, the Works Inspectorate (Dirección del Trabajo) will make a complaint against the employer in a judicial procedure.

Employees that make claims against their employer, even if they are rejected, are protected by an indemnity in accordance with the aforementioned procedure.

Law or Regulation covering other workers but not domestic workers

As noted above, these protections are provided for under the Constitution and Labour Code which applies to all employees.

Notes/Recommendations/Analysis

The Labour Code and Constitution protect these rights for all employees, but could be strengthened by including express provisions for domestic workers.

Article 6 ILO Convention Provision

RIGHT TO PRIVACY

Fair terms of employment as well as decent working conditions and, if they reside in the household, decent living conditions that respect their privacy.

Corresponding National Law or Regulation

Supreme Decree 594 establishes general working conditions but does not contain special provisions for domestic workers.

Generally speaking, there is no regulation of the living conditions of domestic workers.

Law or Regulation covering other workers but not domestic workers

As noted above the Decree established general conditions but does not expressly consider domestic workers or their living conditions.

Notes/Recommendations/Analysis

It is recommended that the law provides for different standards for domestic employees and specifically addresses the living and working conditions of “live-in” employees who reside in the household.

Article 7 ILO Convention Provision

TERMS AND CONDITIONS IN EMPLOYMENT CONTRACT

Domestic workers are informed of their terms and conditions of employment in an appropriate, verifiable and easily understandable manner and preferably, where possible, through written contracts.

Corresponding National Law or Regulation

In accordance with Article 10 of the Labour Code, the employment contract should contain certain provisions as indicated in Article 7 of the Convention, with the exception of annual vacations (since this is a matter regulated by

Article 69 of the Labour Code and it is not necessary to include it in the contract) or the supply of food and accommodation. In this latter case, the parties should agree upon such concepts within the remuneration, in accordance with Article 151 of the Labour Code, concepts that shall not be included as part of the taxable income.

Law or Regulation covering other workers but not domestic workers

Not applicable.

Notes/Recommendations/Analysis

As noted above, Article 7 of the Convention is reflected in the Labour Code.

Article 8 ILO Convention Provision

MIGRANT DOMESTIC WORKERS

1. National laws and regulations shall require migrant domestic workers who are recruited in one country for domestic work in another receive a written job offer or contract of employment that is enforceable in the country in which the work is to be performed.
2. Laws, regulations, or other measures shall specify the conditions under which migrant domestic workers are entitled to repatriation.

Corresponding National Law or Regulation

In accordance with Article 23 of Decree Law 1074 and Article 36 of Supreme Decree 597, Chilean immigration requires an employment contract to be signed in order that a visa application can be processed. However, this is applicable solely in cases of visas subject to an employment contract. In the remainder of the cases (temporary visas), there is no requirement to have an employment contract, only an offer of employment.

For the processing of a visa subject to an employment contract, Chilean law requires that the contract provides that the foreign employee may return to their country of origin at the cost of the employer (Article 37 of Supreme Decree 597).

However, other types of visas (including temporary visas) do not require the return clause. Similarly, said clause loses validity if the employee changes his/her type of visa or acquires permanent residency in Chile.

Law or Regulation covering other workers but not domestic workers

Not applicable.

Notes/Recommendations/Analysis

Domestic workers would benefit from express provisions relating to the visa process to ensure that they are protected.

Article 9 ILO Convention Provision

RESIDENCY AND ENTITLEMENTS

1. Free to reach agreement with employer or potential employer on whether to reside in the household.
2. Domestic workers residing in the household are not obliged to remain in the household or with household members during periods of daily and weekly rest or annual leave.
3. Entitled to keep in their possession their travel and identity documents.

Corresponding National Law or Regulation

1. The law is silent on this point, it being a matter of voluntary agreement between the employee and employer.
2. Effectively, domestic workers do not have an obligation to remain in the household during their rest days or annual leave, it being at the exclusive discretion of the employee.
3. There is no norm that authorizes the employer or another entity or authority to keep such documents.

Law or Regulation covering other workers but not domestic workers

Not applicable.

Notes/Recommendations/Analysis

Domestic workers would benefit from provisions that require agreement of the parties regarding the place in which the periods of rest will take place and expressly prohibit employers from keeping the travel and identity documents of the domestic workers in their possession.

Article 10 ILO Convention Provision

WORKING TIME

1. Equal treatment between domestic workers and workers in relation to normal hours of work, overtime compensation, periods of daily and weekly rest and paid annual leave.
2. Weekly rest shall be at least 24 consecutive hours.

3. Periods when domestic workers are not free to dispose of their time and remain at the disposal of the employer are regarded as part of the hours of work.

Corresponding National Law or Regulation

1. Domestic employees have a special regimen of working hours. Those domestic employees that do not stay overnight in the family home have an ordinary work day of 12 hours, with one hour for lunch. For those workers that stay overnight, the working day is the difference of a minimum rest of 12 hours that is distributed though one uninterrupted rest period of 9 hours and the remaining fraction during the working day, which includes the lunch break of the employee.
2. Regarding the weekly rest, those employees that do not live in the family home have a rest of 33 effective hours plus holidays. For their part, the employees that live in the family home have the right to a weekly rest that may be fractioned into two half days plus holidays.
3. Effectively, those periods when domestic workers are not free to dispose of their time and remain at the disposal of the employer are considered as "passive working days" and therefore, included in the calculation of rest time.

Law or Regulation covering other workers but not domestic workers

The general working day contemplates a regime of a maximum of 10 hours per day, plus the possibility of 2 hours extra per day.

As regards the lunch break (rest during the working day), this is a minimum of 30 minutes and it depends upon the agreement of the parties whether or not this rest is attributable to the working day (though generally it is not).

Notes/Recommendations/Analysis

It is suggested that these provisions are amended to bring them in line with the provisions relating to working hours and rest periods for other workers.

Furthermore, there is an obligation to register for the working day that in practice is not controlled or monitored in any way, therefore, it would be advisable to establish a simpler attendance registration.

There is currently a law reform project in process in the House of Deputies (N° 8292-13) that establishes that employees that do not live in the family home should have a working week of 45 hours (in accordance with the general regime), distributed over a maximum of 6 days of the week and an additional 15 hours per week may be agreed as extraordinary hours (the general rule is up to 2 hours per day), with a surcharge of 50% of the hourly value. With respect to the employees that live in the family home, it is proposed that they have the right to rest on Sunday, holidays and additionally 2 days each month.

For its part, Law Reform Proposal N° 7807-13, also in process before the House of Deputies, proposes that the working day of all domestic employees is 45 ordinary hours per week in accordance with the general regime.

Article 11 **ILO Convention Provision**

WAGE

Domestic workers enjoy minimum wage coverage where such coverage exists and without discrimination based on sex.

Corresponding National Law or Regulation

Effectively, domestic workers enjoy the minimum wage without discrimination. This situation was recently corrected by Law N° 20,255, since before 2009 the specific regulation permitted the granting of a minimum salary that was less than other workers.

Law or Regulation covering other workers but not domestic workers

The minimum wage now applies to all employees as noted above.

Notes/Recommendations/Analysis

This Article is reflected in the current law.

Article 12 **ILO Convention Provision**

PAYMENT IN KIND

1. Domestic workers shall be paid directly in cash at regular intervals at least once a month. Unless provided for by national laws, regulations or collective agreements, payment may be made by bank transfer, bank cheque, postal cheque, money order or other lawful means of monetary payment, with the consent of the worker concerned.
2. National laws, regulations, collective agreements or arbitration awards may provide for the payment of a limited proportion of the remuneration of domestic workers in the form of payments in kind that are not less favourable than those generally applicable to other categories of workers, provided that measures are taken to ensure that such payments in kind are agreed to by the worker, are for the personal use and benefit of the worker, and that the monetary value attributed to them is fair and reasonable.

Corresponding National Law or Regulation

In this case, the general rule of Article 54 of the Labour Code is applied, in the sense that the remuneration should be paid in legal tender. Although Article 41 of the Labour Code provides that it is possible to remunerate in money and in kind, it is clear that Article 41 of the Labour Code prevails over that set forth in Article 41 due to special criteria.

Law or Regulation covering other workers but not domestic workers

The only case where it is expressly authorized to pay remuneration in kind is in the case of agricultural workers, in which case, payments in kind may not exceed 50%.

Notes/Recommendations/Analysis

Law reform bill 8292-13, currently being processed before the House of Deputies, proposes to expressly establish that the remuneration is in money and that, in any case, the food and accommodation of the employee that lives in the family home shall not be attributed toward this.

Article 13 ILO Convention Provision

OCCUPATIONAL SAFETY AND HEALTH

Right to a safe and healthy working environment, ensuring the occupational safety and health of domestic workers.

Corresponding National Law or Regulation

There is no specific regulation on this matter for domestic workers, meaning that the general rules of any other industry, site or services company apply.

In this context, employers are required to provide a minimum amount of drinkable water, personal hygiene services, environmental conditions and safety of facilities and food safety.

In matters of occupational safety, there are no specific regulations for domestic workers.

Domestic workers are covered by the same protections as other workers through an insurance scheme established by the Law on Work Accidents and Professional Sickness (Law N° 16.744), which the employer is required to contribute to. However, the prevention plans are centred on other activities (industrial, agricultural, services, innings etc.) and not on domestic workers.

Law or Regulation covering other workers but not domestic workers

In industrial, agricultural or mining activities, amongst others, there are broad regulations on procedures for a safe workplace, proactive and reactive safety

systems, presentations and training on security etc., which are lacking for domestic workers.

Notes/Recommendations/Analysis

It is suggested that different standards are established for domestic employees in matters of occupational safety, health and environmental conditions in the work place.

Article 14 ILO Convention Provision

SOCIAL SECURITY

Domestic workers enjoy conditions that are not less favourable than those applicable to workers in respect of social security protection, including with respect to maternity.

Corresponding National Law or Regulation

Domestic workers enjoy the same protection as other workers in matters of social security, including maternity.

The Chilean labour regime contemplates indemnification for years of service in the case of dismissal for a cause attributable to the employer. However, in practice, domestic workers who provide services that involve cleaning, cooking, caring for children) do not receive such payment but instead receive an additional payment of social security equivalent to 4.11% of their monthly remuneration.

Law or Regulation covering other workers but not domestic workers

Other domestic workers, such as drivers or apartment receptionists, do not receive the abovementioned additional payment, meaning that in the case of dismissal for a cause attributable to the employer, they must be paid indemnification for years of service, of one month for every year of service, with a cap of 11 years.

Notes/Recommendations/Analysis

It is recommended that uniform conditions for all domestic workers are established.

Article 15 ILO Convention Provision

REGULATION OF RECRUITMENT/EMPLOYMENT AGENCIES

Protect domestic workers, including migrant domestic workers, recruited or placed by private employment agencies, from abusive practices.

- (c) Determine conditions governing the operation of private employment agencies;

- (d) Adequate machinery and procedures exist for the investigation of complaints, alleged abuses and fraudulent practices;
- (e) Members, and where appropriate, in collaboration with other members, provide adequate protection for and prevent abuses of domestic workers recruited or placed in their territory by private employment agencies;
- (f) Where workers are recruited to one country for work in another, conclude bilateral, regional or multilateral agreements;
- (g) Fees charged by private employment agencies are not deducted from the remuneration of domestic workers.

Corresponding National Law or Regulation

There is no regulation of private employment agencies.

Private employment agencies maintain a tariff for their service of recruiting domestic workers and such fees are usually charged to the employers. There are no cases in administrative or judicial jurisprudence where employees have been charged such fees.

However, it is important to note that there is a general prohibition in labour law with respect to employers making unilateral deductions from remuneration of the employees and, even in the event of an agreement, the general rule is that such deduction cannot exceed 15% of the monthly remuneration.

Finally, it is necessary to emphasize a recent modification to the Criminal Code (Law 20,507) that sanctions those persons, with intention to profit, facilitate or promote the illegal entry of immigrants, with a penalty of up to 3 years of imprisonment and a fine of 100 UTM (Unidades Tributarias Mensuales).

Law or Regulation covering other workers but not domestic workers

Not applicable.

Notes/Recommendations/Analysis

It does not appear necessary to adopt additional regulations in relation to private employment agencies. However, a specific regulation regarding the prohibition against making deductions for the fees or expenses of the agencies is recommended.

Article 16 **ILO Convention Provision**

ACCESS TO DISPUTE SETTLEMENT PROCEDURES

Effective access to courts, tribunals or other dispute resolution mechanisms under conditions that are not less favourable than those available to workers generally.

Corresponding National Law or Regulation

Chilean legislation contemplates two protection measures for employees:

1. Administrative, led by the Works Inspectorate, consisting of a process of voluntary conciliation, but mandatory attendance.
2. Judicial, before a labour court.

In the case of the judicial processes, the employees may access pro bono and professional legal assistance.

Both are expeditious dispute resolution paths.

Law or Regulation covering other workers but not domestic workers

Not applicable.

Notes/Recommendations/Analysis

The Article is adequately reflected under current legislation.

Article 17 **ILO Convention Provision**

LABOR INSPECTION

1. Develop and implement measures for labour inspection, enforcement and penalties.
2. Measures shall specify the conditions under which access to household premises may be granted, having due respect for privacy.

Corresponding National Law or Regulation

1. The Works Inspectorate regularly develops programmes to evaluate and monitor the situation of domestic workers. Likewise, in the case of detecting breaches, principally due to claims of the workers themselves, the Inspectorate will apply fines payable to the State.

2. Although the Decree with Force N° 2, provides powers to the Works Inspectorate to enter into private property, this does not happen in practice as family homes are protected by privacy laws.

Law or Regulation covering other workers but not domestic workers

Not applicable.

Notes/Recommendations/Analysis

A legislative change to permit access of inspectors to private homes is highly recommended in order to verify the working conditions of domestic workers.

Article 18

ILO Convention Provision

IMPLEMENTATION

Each Member shall implement the provisions of this Convention, in consultation with the most representative employers and workers organizations, through laws and regulations, as well as through collective agreements or additional measures consistent with national practice, by extending or adapting existing measures to cover domestic workers or by developing specific measures for them, as appropriate.

Corresponding National Law or Regulation

In Chile, there are diverse union organizations that unite domestic workers. These types of organizations are usually summoned to meetings and discussions in processes of the formation of laws, before the National Congress.

We do not have knowledge of employer associations.

Law or Regulation covering other workers but not domestic workers

Not applicable.

Notes/Recommendations/Analysis

It is recommended that such consultation processes are followed when implementing the provisions of the Convention.

FRONT COVER PHOTO A Muslim woman, displaced by recent violence in Kyukphyu township, cries after arriving at the Thaechaung refugee camp outside of Sittwe.
Soe Zeya Tun / REUTERS



**THOMSON REUTERS
FOUNDATION**

Thomson Reuters Foundation
30 South Colonnade
London E14 5EP
United Kingdom