

MODEL LAW ON WORKING TIME IN DOMESTIC WORK

LIST OF ABBREVIATIONS

ILO

C1	Hours of Work (Industry) Convention, 1919 (No. 1)
C14	Weekly Rest (Industry) Convention, 1921 (No. 14)
C30	Hours of Work (Commerce and Offices) Convention, 1930 (No. 30)
C47	Forty-Hour Week Convention, 1935 (No. 47)
C106	Weekly Rest (Commerce and Offices) Convention, 1957 (No. 106)
C132	Holidays with Pay Convention (Revised), 1970 (No. 132)
C171	Night Work Convention, 1990 (No. 175)
C175	Part-time Work Convention, 1994 (No. 175)
R103	Weekly Rest (Commerce and Offices) Recommendation, 1957 (No. 103)
R116	Reduction of Hours of Work Recommendation, 1962 (No. 116)
R157	Nursing Personnel Recommendation, 1962 (No. 157)
R178	Night Work Recommendation, 1990 (No. 178)
R182	Part-time Work Recommendation, 1994 (No. 182)

ILO 2005	ILO Committee of Experts on the Application of Conventions and Recommendations <i>Hours of Work: From Fixed to Flexible</i> (2005)
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EU

WTD	Working Time Directive (Directive 2003/88/EC)
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National

L18.065	Uruguayan Act No. 18.065 on domestic work
SD7	South African Sectoral Determination 7

PART A DEFINITIONS

1. For the purposes of this Model Law,

'working time' means time during which the domestic worker is at the disposal of the employer and available to undertake his or her duties; working time includes the time a domestic worker spends travelling to a worksite other than the worker's usual place of work, or where the domestic worker travels with the employer or members of the employer's household, the travel periods count as working time; where the domestic worker performs assignments for an intermediary, such as a temporary work agency, periods during which the worker travels between assignments count as working time.

'rest' means any period during which the domestic worker is not required to be present in the workplace, is not expected to be available to undertake his or her duties and is not required to be contactable by the employer; in the case of 'live-in' domestic workers and those undertaking 'external on-call work' who are required to spend the night on the employer's premises, only periods during which the worker has unimpeded access to a private and secure room that meets all minimum accommodation requirements set out in relevant laws or collective agreements are counted as periods of rest;

'on-call duty' means a period of working time during which the domestic worker is required to be at the disposal of the employer by being ready, willing and able to return to duty as required;

'internal on-call duty' means a period of on-call duty during which the worker is on-call at the workplace or any other place designated by the employer; 'external on-call duty' means on-call duty during which the worker is at home or other place of his or her choice; where the degree of availability of the worker is such that it is equivalent to a requirement to remain on the premises of the employer, the on-call period is classified as internal on-call duty;

'night work' means a period of at least four hours performed between the hours of 18:00 and 6:00;

'live-in' domestic worker means a worker whose permanent residence is on the premises of the employer or other place of the employer's choosing;

'employer' means the person or entity legally recognised as the domestic worker's employer; where it is not the employer of the domestic worker, a temporary work agency or other intermediary that assigns domestic workers to third parties, is jointly liable with the employer for ensuring that the provisions of this law are complied with.

PART B FRAMING STANDARDS

2. The Working Time Agreement (WTA)

2.1 At the start of the employment contract, the employer and domestic worker shall negotiate a Working Time Agreement (WTA) that will, as far as possible, reflect the preferences of both parties on the duration and scheduling of the domestic worker's hours.

2.2 At the conclusion of the negotiations, the employer shall provide the domestic worker with a copy of the WTA written in accessible terms and in a language the domestic worker understands [SD7, Clause (2)].

2.3 The WTA must include the terms agreed between the domestic worker and the employer on:

- the duration of normal daily and weekly working hours;
- the days on which the work will be performed;
- the details of any reference period over which weekly hours may be averaged;
- rest breaks including periods of daily rest and weekly rest;
- the conditions under which overtime work may be requested by the employer and the amount of additional payment for this work, where relevant;
- any agreement relating to work at night and the amount of additional payment for this work, where relevant;
- paid leave entitlements;
- public holiday entitlements and the amount of additional payment for work performed on public holidays, where relevant;
- whether or not on-call work will be required and details of the scheme;
- mechanisms for adjustments to working hours at the initiative of the domestic worker and the employer;

(k) collective bargaining rights on working time;

(l) information on how to access the state inspection and domestic workers advisory services on working time, and any national grievance resolution system available to workers generally;

(m) any other relevant matters agreed between the parties.

3. Daily normal hours

3.1 The normal working hours of domestic workers shall not exceed eight hours in any 24-hour period (C1; C30).

3.2 Exceptions are permitted for domestic workers engaged on hours-averaging schemes (Part B, Section 9 below) and on-call work (Part C, Chapter 1 below).

3.3 Except where provided elsewhere in this law, normal hours of work shall be continuous [R157 Paragraph 33(1)].

3.4 The normal working hours of night workers shall not exceed seven hours in any 24-hour period [R178, Paragraph 4(2)].

3.5 Where the daily span of hours exceeds nine hours, the provisions in Section 10.4 apply.

4. Weekly normal hours

4.1 The normal working hours of domestic workers shall not exceed:

- 40 hours per week (C47, R116); and
- 48 hours per week including overtime (ILO 2005).

4.2 The normal working hours of domestic workers who are night workers shall not exceed:

- 35 hours per week; and
- 42 hours per week including overtime.

5. Rest breaks

5.1 During each period of working time of 5 hours or more, domestic workers are entitled to a paid rest break of at least one hour [SD7, Article 15].

5.2 Collective agreements concluded between representative organisations of domestic workers and employers may reduce the paid rest break to 30 minutes, provided the normal span of daily hours is reduced by 30 minutes as a result of this change.

5.3 Domestic workers who work more than ten hours are entitled to an additional rest break of 30 minutes after eight hours of work.

6. Daily rest

6.1 The minimum period of daily rest for a domestic worker must be at least 11 consecutive hours in each 24 hour period [WTD, Art 3].

6.2 An exception from this requirement is permitted for external on-call work (Part C, Chapter 1.III below).

7. Weekly rest

7.1 Domestic workers are entitled to a rest period of at least 24 consecutive hours [C14, Article 2(3); C106, Article 6(4)] in each seven day period, which must coincide with the traditional or customary day of rest [C14, Article 2(3); C106, Article 6(4); L18.065, Article 4].

7.2 In work that involves special hazards or a heavy physical, mental or emotional strain, the domestic worker is entitled to a weekly rest period of 48 hours [R 157, Paragraph 36(1)].

7.3 Where, due to his or her religious beliefs, a domestic worker would prefer to take weekly rest on a different day, he or she is entitled to do so [C106, Paragraph 6(4)].

7.4 A domestic worker may be asked to work on the weekly rest day only in cases of urgent and essential need for the domestic worker's services, such as an imminent risk of injury to those in his or her care.

7.5 Where a domestic worker works on a weekly rest day, he or she must be compensated in the form of either:

(a) remuneration at the ordinary rate plus 100 per cent; or

(b) where provided for in a collective agreement concluded by representative organisations of domestic workers and employers, a period of compensatory rest of two hours for each hour worked (or part thereof); the compensatory rest period is to be taken as soon as possible after the weekly rest day, and in any event within one month, and at a time acceptable to both the employer and domestic worker.

8.6 Exceptions can be permitted for domestic workers engaged on external on-call work (Part C, Chapter I.III below).

8. Overtime work

8.1 All hours worked beyond normal hours, including the normal hours of part-time workers, shall be deemed to be overtime hours and compensated as such [R116, Paragraph 16].

8.2 As an exception to Section 8.1, where a domestic worker is engaged to work under an hours averaging scheme as outlined in Part B, Section 9, each hour or part thereof worked in excess of the total number of hours permitted over the reference period as a whole is deemed to be overtime and must be compensated as such.

8.3 There should be as little recourse to overtime work as possible [R157, Paragraph 37(1)].

8.4 Except in cases of an urgent and essential need for the domestic worker's services, domestic workers are entitled to at least three days' notice of the requirement to work overtime hours.

8.5 Except in cases of an urgent and essential need for the domestic worker's services, such as an imminent risk of injury to those in his or her care, the domestic worker may refuse the employer's request to work overtime.

8.6 Overtime hours must be compensated in the form of either:

(a) remuneration at the ordinary rate plus at least 50 per cent [SD7, Clause 12(1)];

(b) where provided for in a collective agreement concluded by representative organisations of domestic workers and employers and agreed between the individual domestic worker and his or her employer, a period of compensatory rest of 90 minutes for each hour of overtime worked (or part thereof); this compensatory rest period is to be taken as soon as possible after the overtime period and in any event within one month [SD7, Clause 12(2), (3)(a)] and at a time acceptable to both the employer and the domestic worker.

9. Collectively agreed hours-averaging

9.1 To address periods of unpredictable demand for the services of a domestic worker, representative organisations of domestic workers and employers may negotiate a scheme that permits a domestic worker and his or her employer to agree on a reference period of not more than four weeks over which the normal weekly hours of domestic workers shall be averaged [R116, Paragraph 1], provided that

(a) during each seven day period during the reference period, working hours must not exceed a total of 56 hours;

(b) no more than three four-week periods of hours-averaging is permitted in each 52-week period;

(c) hours-averaging is not permitted for domestic workers who undertake a substantial proportion of their working hours at night.

9.2 The relevant collective agreement must outline the elements of the hours-averaging scheme, including the circumstances in which hours-averaging is permitted; in particular, the collective agreement should specify that:

(a) the domestic worker will be paid in the form of a fixed sum for each week of the scheme's operation plus any wage premia;

(b) hours averaging schemes may only be introduced where the domestic worker agrees, and regard has been had to the domestic worker's own family and care duties and working time preferences;

(c) the weekly hours schedule as agreed will be recorded in writing and a copy made available to the domestic worker;

(d) the domestic worker will be provided with at least seven days' notice of his or her weekly hours schedule.

10. Working hours schedules

10.1 Domestic workers who work on a part-time basis are entitled to all of the entitlements contained in this framework, on a pro rata basis where appropriate [C175];

Part-time domestic workers are entitled to equal treatment with comparable full-time workers of the employer in line with the applicable laws and collective agreements on the equality of part-time workers [C175].

10.2 Where a domestic worker has been required to work, including as part of a period of on-call work, and is willing and able to commence work, and work

of less than two hours is provided, he or she must be paid a minimum of two hours' pay plus travel time at the ordinary rate;

An alternative method of remuneration for travel time may be determined through negotiations between representative organisations of domestic workers and employers.

10.3 Having regard to the particular vulnerabilities of domestic workers, it is prohibited to employ a domestic worker on an 'as and when required' ('casual') basis.

10.4 The normal working hours of domestic workers whose span of daily working time (the period between the start and end of the working day) is more than nine consecutive hours shall not exceed seven hours in any 24-hour period; alternatively, at the behest of the domestic worker, he or she may work an eight-hour day and be compensated in the form of additional paid annual leave, in terms of Part B, Section 13, at a rate of at least one hour for every hour worked beyond the nine-hour span.

10.5 Under no circumstances may the domestic worker's normal daily hours be extended over a period of more than 13 hours.

11. Night work

11.1 Domestic workers who perform any work between 18:00 and 06:00 are entitled to be compensated for these hours in the form of either:

(a) remuneration at the ordinary rate plus a night work premium [C171, Article 1(a)] of at least 50 per cent on weekdays and at least 100 per cent on weekly rest days and public holidays;

(b) where provided for in a collective agreement concluded by representative organisations of domestic workers and employers and agreed between the individual domestic worker and his or her employer, a period of compensatory rest of 90 minutes for each hour of night work performed on weekdays and two hours for work performed on weekly rest days and public holidays.

11.2 If more than half of the hours in a 24-hour period are performed at night, the compensation outlined in Section 11.1 (a) is applicable for all work undertaken in that 24-hour period;

11.3 Except in cases of an urgent and essential need for the domestic worker's services, such as an imminent risk of injury to those in his or her care, the worker should be given at least 7 days' notice of a requirement to perform night work [R178, Paragraph 21].

11.4 Overtime hours are not permitted where any work undertaken between 18:00 and 06:00 involves special hazards or a heavy physical, mental or emotional strain [R178, Paragraph 5(2)].

11.5 Where travel to the workplace to perform night work will involve danger to the domestic worker or considerable disruption, the employer must ensure that a safe mode of transport is available, such as through the provision of a travel allowance.

11.6 Domestic workers who work at night are entitled to a health assessment paid for by the employer:

(a) before commencing a period of night work in terms of the Working Time Agreement;

(b) at regular intervals thereafter; and

(c) if they experience health problems that may be related to working at night [C171, Article 4].

11.7 The employer should take necessary measures to maintain during night work the same level of protection against occupational hazards as during the day, in particular by avoiding, as far as possible, the isolation of workers [R178, Paragraph 12].

12. Public Holidays

12.1 Domestic workers are entitled to the same public holidays as other workers.

12.2 Where a domestic worker celebrates public holidays that differ from those recognised in the country of his or her employment, he or she is entitled to take at least one of these holidays in lieu.

12.3 Domestic workers may be required to work on a public holiday where there is an urgent and essential need for the domestic worker's services, such as an imminent risk of injury to individuals in his or her care.

12.4 Where a domestic worker works on a public holiday, he or she must be compensated in the form of either:

(a) remuneration at the ordinary rate plus at least 100 per cent; or

(b) where provided for in a collective agreement concluded by representative organisations of domestic workers and employers and agreed between the individual domestic worker and his or her employer, a period of compensatory rest of two hours for each hour worked (or part thereof); the compensatory rest period is to be taken as soon as possible after the public holiday, and in any event within one month, and at a time acceptable to both the employer and domestic worker.

13 Paid annual leave

13.1 The domestic worker is entitled to paid annual leave of no less than three working weeks [C132, Article 1] on the same basis as other workers.

13.2 Domestic workers engaged in work that involves special hazards or a heavy physical, mental or emotional strain are entitled to four working weeks' leave [R167, Paragraph 39(2)].

13.3 During the annual leave period, a domestic worker cannot be required to remain at the employer's household; periods spent accompanying the household on vacation do not count towards the leave period.

14. Paid sick leave

14.1 Domestic workers are entitled to sick leave of at least ten paid days per year [SD7, Clause 20].

14.2 While on sick leave, the domestic worker's employment relationship shall be maintained and he or she shall not lose continuity of service for any purpose [R157, Paragraph 41].

14.3 Legally binding national-level collective agreements concluded by representative organisations of domestic workers and employers may establish a national scheme for paid sick leave for domestic workers.

15. Working hours and wages

15.1 Employers should ensure that domestic workers are remunerated at a level that sustains a decent standard of living without recourse to excessive working hours, including by avoiding excessively short periods of engagement.

15.2 Representative organisations of domestic workers and employers shall engage in regular negotiations on working hours and wages that take into account the principle set out in Section 15.1.

15.3 Representative organisations of domestic workers and intermediaries that assign workers to third parties shall engage in regular negotiations on working hours and wages;

As part of these negotiations, the parties shall design and review methods of ensuring that domestic workers' hours of work are sufficient to ensure that they earn a decent income, taking into consideration at least the elements set out in the Minimum Wage Fixing Convention, 1970 (No. 131), Article 3, without recourse to hours beyond the limits set out in this Model Law; the possibility of setting a mandatory minimum hours of engagement standard to secure a guaranteed income for the most vulnerable domestic workers should be considered.

PART C TEMPORAL FLEXIBILITY STANDARDS

CHAPTER 1. ON-CALL WORK

I. GENERAL

16. Prerequisites

16.1 For a domestic worker to undertake on-call duty, the following prerequisites must be complied with:

(a) a written agreement must be concluded between the domestic worker and the employer to the effect that the worker is prepared to undertake on-call duty;

(b) the domestic worker must be given at least seven days' notice of the on-call period; where the domestic worker performs call-out duty without such notice, he or she is entitled to a 25 per cent addition to his or her hourly wage during the call-out period and, in the case of external on-call work, a three hour extension of the daily rest period to which she is entitled under Part B, Section 6;

17. Call-out criteria

17.1 During a period of on-call duty, the domestic worker may be called-out only to respond to an urgent and essential need for his or her services, such as an imminent risk of injury to a person in his or her care.

17.2 The call out period must come to an end when the emergency is no longer imminent or has been adequately addressed.

17.3 Until called-out, the domestic worker must not be requested to undertake any other duties.

II. INTERNAL ON-CALL WORK

18. Internal on-call periods

18.1 Internal on-call periods count as working time for all purposes [C30, Article 2; ILO 2005].

18.2 During internal on-call periods, the domestic worker must be provided with a secure, private room that complies with minimum accommodation requirements set out in the applicable laws, regulations or collective agreements.

18.3 As an exception to Section 18.2, where it is essential that a domestic worker be present during an on-call period in a room with a person for whom they are caring, he or she is entitled to remuneration at the ordinary rate plus 25 per cent for every hour of the on-call period, irrespective of whether he or she receives a call-out request.

18.5 All on-call duty performed by 'live-in' domestic workers is classified as internal.

III. EXTERNAL ON-CALL WORK

19. Limits on on-call and call-out periods

19.1 A domestic worker can only be required to be on-call on an external basis on a maximum of:

(a) five periods of a maximum of three days in any four-week period; and

(b) 50 times per year [SD7, Clause 14(3)].

19.2 The limits in Section 19.1 can be adjusted by a collective agreement concluded between representative organisations of domestic workers and employers, provided that the limits set by the collective agreement are equally protective of decent work for the domestic workers involved.

19.3 A worker can be required to be on-call on a maximum of two weekly rest days in every four-week period.

19.4 Periods during which the domestic worker is called out to work count as working time for all purposes and are to be remunerated as such [R 157, Annex, Paragraph 21].

19.5 Under no circumstances shall a period of call-out extend beyond a total of eight hours.

20. Breaks following call-out periods

20.1 On the completion of a call-out period that has prevented the domestic worker from enjoying the daily rest period required by Part B, Section 6, the worker must not be required to commence his or her next period of work for at least 14 hours.

20.2 Where the domestic worker has performed a period of on-call work during which:

(a) he or she was recalled to duty more than once; or

(b) he or she was recalled for a single period of three hours or more; or

(c) the nature of the work undertaken during the on-call period involved special hazards or a heavy physical, mental or emotional strain, such as providing assistance to a critically ill member of the employer's household,

he or she is entitled to a break of at least 18 hours before the commencement of the next period of work.

21. Compensation for on-call work

21.1 Availability allowance

21.1.1 Domestic workers who perform external on-call duty must be compensated in the form of an allowance of at least 25 per cent of the ordinary wage per hour, irrespective of the rate or incidence of call-out.

21.2 Call-out premium

21.2.1 Workers recalled to work must be compensated in the form of either:

(a) remuneration at the ordinary rate plus at least 50 per cent for each hour during which the worker is on call-out, and at least 100 per cent for call-out duty performed during the period from midnight to 06:00 and on the weekly rest day and public holidays; the call-out premium is in lieu of any overtime, night work, weekly rest or public holiday premia to which the worker would normally be entitled;

(b) where provided for in a collective agreement concluded by representative organisations of domestic workers and employers and agreed between the individual domestic worker and his or her employer, a period of compensatory rest is to be taken as soon as possible after the call-out period and in any event within one month and at a time acceptable to both the employer and domestic worker.

21.2.2 The domestic worker who performs call-out duty is also entitled to compensation for travel time at the relevant premium rate. An alternative method of remuneration for travel time may be determined through negotiations between representative organisations of domestic workers and employers.

21.2.3 Where travel to the place of work will involve danger to the domestic worker or considerable disruption, the employer must ensure that a safe mode of transport is available, such as through the provision of a travel allowance.

CHAPTER 2. WORKING TIME ADJUSTMENTS

22.1 Where the employer would like to make significant adjustments to a domestic worker's duration or schedule of hours, the domestic worker should be informed of the proposed changes and options discussed for implementation of the change. These changes should take into account the preferences of the domestic worker.

22.2 Domestic workers are entitled to request adjustments in the duration or scheduling of their working hours, which must be granted by the employer unless these adjustments would conflict with an essential need for the domestic worker's services.

The procedure for making a working time adjustment request shall be set out in a national-level collective agreement concluded by the representatives of domestic workers and employers or, where this is not possible, in a law or regulations. This instrument will set out details of the scheme, which will include requirements that:

(a) the employer provide a written response to such a request, including reasons for refusing it where relevant;

(b) the domestic worker be protected from discrimination in response to his or her request;

(c) the scheme will ensure that requests by a domestic worker for a change in normal working hours in order to care for a young child or disabled or sick family member [R 182, Paragraph 20] will be granted in all but exceptional circumstances;

(d) the domestic worker and the employer have access to the dispute resolution or mediation procedures applicable to other employment disputes when no agreement can be reached.

CHAPTER 3. EMERGENCY FAMILY LEAVE

23.1 Domestic workers are entitled to at least five days' paid leave per year to attend to family emergencies [SD7, Clause 21];

23.2 Where domestic workers who are migrants need to return to their home country as a result of a family emergency, they are entitled to at least eight days of emergency family leave.

PART D EFFECTIVE REGULATION STANDARDS

24. Record-keeping

24.1. Each week, the employer shall record the hours he or she has actually worked in a Weekly Hours Record (WHR) and have it signed by the employer.

24.2. The domestic worker must be given the opportunity to view the WHR each week, whether separately or as part of a wage slip, in either a hardcopy or in electronic form.

24.3. The WHR must contain as a minimum the following information:

(a) the name and address of the employee;

(b) the social security number or equivalent of the employee;

(c) a brief statement of the domestic worker's duties;

(d) the total number of normal hours performed by the domestic worker on each working day and the week as a whole;

(e) where an hours-averaging scheme is in operation, the week of the reference period;

(f) hours worked on weekly rest days and public holidays and the additional payments made;

(g) any hours of overtime worked, the days on which they were performed and the overtime payments made;

(h) any days or hours of leave or public holidays and payments made in respect of the leave or holiday periods.

(i) any hours of night work and the additional payments made;

(j) any periods of on-call work, including both on-call and call-out periods, and the payments made in respect of this work;

24.4 A copy of all WHRs, including the current record, must be provided to the domestic worker and, where it exists, his or her representative organisation at the local level.

24.5 Records must be retained by the employer for a two-year period and made available to the labour inspectorate and the domestic worker's representative organisation on request. It is an offence to fail to keep WHRs or to fail to provide them when requested.

25 Implementation

25.1 As part of broader efforts to ensure the application of the law, the government will consult regularly with representative organisations of domestic workers and employers at the national level to devise and review methods of:

(a) monitoring the working hours of domestic workers; and

(b) implementing and enforcing this standard,

with a view to adopting and refining strategies that contribute to the goal of achieving decent work for domestic workers.

25.2 The influence of the statutory standards shall be evaluated periodically, and at least once in each five-year period, and tailored reforms introduced as needed.

25.3 Representative organisations of domestic workers and employers at all levels will design and implement programmes towards educating and providing assistance to domestic workers and employers in complying with these standards.