

Level Works



LABOR COMPLIANCE COUNTRY ISSUES SUMMARY

EL SALVADOR

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Country Summary Introduction:

The U.S.-Central America-Dominican Republic Free Trade Agreement (CAFTA-DR), implemented between El Salvador and the United States on March 1, 2006, provides El Salvador preferential access to U.S. markets. CAFTA-DR allows clothing from Central America and the Dominican Republic to be exported to the United States without paying import taxes (called tariffs) and replaced the US Caribbean Basin Trade Partnership Act (CBTPA), which had been in effect since October 2000. Textiles and apparel, shoes, and processed foods are among the sectors that benefit. In addition to trade benefits, CAFTA-DR also provides trade capacity building, particularly in the environment and labor areas, and a framework for additional reforms on issues such as intellectual property rights, dispute resolution, and customs that will improve El Salvador's investment climate. For sensitive sectors such as agriculture, the agreement includes generous phase-in periods to allow Salvadoran producers an opportunity to become more competitive.

Adequate regulatory oversight of labor laws remain a challenge for the Salvadoran government. In addition, corruption among labor inspectors and in the labor courts remains a barrier to enforcing the minimum wage laws. All international treaties and conventions ratified by the Congress of El Salvador become laws of the Republic. In cases of conflict between a law and a treaty, the ratified treaty shall prevail. Among the ILO conventions ratified by El Salvador there are the following: Convention 155 (concerning Occupational Safety and Health and the Working Environment); Conventions 29 and 105 (concerning Forced & Bonded Labor); Conventions 182 (concerning the prohibition and immediate action for the elimination of the worst forms of child labor); Conventions 100 and 111 (concerning Equal Remuneration and Discrimination).

Compliance Challenges (in order of importance):

Violations to Freedom of Association: While the law prohibits anti-union discrimination, these provisions are rarely enforced by the government. Significant anti-union activity on the part of factory management is a historic problem in Salvadoran factories, especially in factories located in the country's export processing zones (EPZs). An ongoing concern is union-busting tactics employed by factory managers, including firings of union organizers and union sympathizers, threatening union sympathizers, and in some cases, the complete closure of factories in which workers attempted to unionize. Significant discrimination against labor union organizers persists. The government does not allocate sufficient resources for adequate inspection and oversight to ensure respect for association and collective bargaining rights in free trade zones (FTZs). Union leaders assert that the government and judges continued to use excessive formalities as a justification to deny applications for legal standing to unions and federations. Among the requirements to obtain legal standing, unions must have a minimum of 35 members in the workplace, hold a convention, and elect officers. Companies sourcing product in El Salvador should take into consideration this tendency and be aware of the challenges to freedom of association that may be present, even if appearing to be hidden.

Child Labor: Child labor is a very complex issue that is woven throughout multiple industries in El Salvador. The law prohibits the employment of children under the age of 14, and from the age of 12 it is acceptable for children to engage in light work as long as it is not harmful to their health and it does not interfere with education. Although it is more prevalent in the rural farm regions as opposed to urban settings, it is widespread across many industries including agricultural-based production (especially sugarcane and coffee harvesting), fishing, garbage scavaging, firework production and more increasingly street vendors and prostitution. A primary challenge in dealing with this issue is that the government does not devote adequate resources to effectively enforce child labor laws in agricultural activities, especially coffee and sugarcane production, or in the large informal sector. When considering this issue it is essential for companies who intend to purchase agricultural-based products incorporate international standards in their contractual relationships with suppliers. It is essential to note the supply chain is multi-layered and sub-contractors being used by suppliers should be held to the same standards. Another important action is to adopt effective monitoring systems to verify that labor conditions in subcontractors' facilities comply with international standards. When considering this issue from a cultural perspective it must be noted that in some poverty-stricken areas families are tied into child labor practices because they require the income in order to feed every mouth. The Ministry of Labor in El Salvador has reported that it receives few complaints of child labor violations because many citizens perceive child labor as an essential component of family income, not a human rights abuse. These cultural factors make it even more important that there be a joint plan between all parties to improve the situation of these children.

El Salvador is the only Central American country to participate in ILO's time bound program initiative that focuses on eliminating the worst forms of child labor in the next five to ten years.

Pay Below Contract/Legal Wage Rate: The law sets a maximum normal workweek of 44 hours, limited to no more than six days, and requires that all verified work in excess of the normal daily schedule shall be remunerated with a premium equal to 100% of the basic hourly salary. The law mandates that full-time employees be paid for an eight-hour day of rest in addition to the 44-hour normal workweek. The law prohibits compulsory overtime. Based on in-depth review of all records and employee interviews, our experience shows that some factories do underpay workers for overtime by having employees voluntarily work unpaid overtime hours before/after their normal work shift, during weekdays and on Saturdays, in order to reach their weekly production goal and earn the pertinent bonus. Some employees from the maquila sector are still not receiving the benefits to which they are legally entitled – such as social security and retirement fund benefits- even though they are being deducted from the workers' quota in every payroll. Others are not being paid for their annual leave. The leading barriers to resolving these issues are the small number of audits executed by the Salvadoran Labor Ministry combined with the vast corruption among labor inspectors and in labor courts when it comes to enforcing minimum wage laws.

Compliance with the Law: As per local law, all factories will not be able to be inhabited and start operations without a written sanitary permit. Nonetheless, it is common for maquila factories to not pursue this permit, which is issued by the Health Ministry, prior to starting operations. The law also requires factories to maintain an environmental permit to start operations; however, based on review of records, it is more common to find maquila factories do not have the necessary permit issued by the Environmental Ministry. It is common to find inadequate record keeping systems within many factories. Some factories maintain outdated or incomplete files and records, and employment contracts may describe incorrect work schedules or do not outline that an employee may work on alternating day/night shifts. The law also requires that all employers receive a signed copy of their employment contract and this has not been the case in some maquila factories visited by our teams. Violations to the local law could be minimized if the Salvadoran Labor Ministry and Environmental Ministry increased the number of audits they conducted per year and ensured that all factories had been audited at least once since they started operations.

Poor Health & Safety in Factories: The law requires that all employers take steps to ensure employees haven't minimal risk to their health and safety in the workplace. This includes prohibitions on the employment of persons under age 18 in occupations considered hazardous or morally dangerous. However, the law does not clearly recognize the right of workers to remove themselves from hazardous situations without jeopardizing their continued employment. In maquila factories, it is common to find workers in the cutting department, spot cleaning area, chemical storage area and sewing department not using appropriate personal protective equipment required for the work position. Health and safety regulations are outdated, and law enforcement is inadequate. Factory walkthrough and documentation reviewed has revealed that factories do not comply with some global health and safety requirements adopted by well known apparel brands. Such common violations include: holding at least two fire drills per year; having emergency lights in stairways and exit routes; having written policies on personal protective equipment and on chemical handling; having fire alarm systems with a distinct sound from other notice systems; having complete emergency evacuation diagrams posted throughout the facility; having factory workers and supervisor trained in first aid procedures and having chemicals in a separate area which is equipped with appropriate fire extinguishers, safety signs, ventilation, instructions on handling and disposal, and Personal Protective Equipment (PPE) for personnel. In regards to the agricultural industry workers are often exposed to harmful chemicals and pesticides. During audit inspections it is essential for all health and safety compliance issues to be reviewed and addressed on site.

For more information:

If you are interested in more specific information related to country specific issues/challenges or Level Works approach and recommendations for addressing these issues, please contact Level Works directly at: info@level-works.com