Protection of Wages Convention, 1949 (No. 95)

Protection of Workers' Claims (Employer's Insolvency) Convention, 1992 (No. 173)
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Convention concerning the Protection of Wages (Entry into force: 24 Sep 1952)
Adoption: Geneva, 32nd ILC session (01 Jul 1949) - Status: Up-to-date instrument (Technical Convention).

Preamble

The General Conference of the International Labour Organisation,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Thirty-second Session on 8 June 1949, and

Having decided upon the adoption of certain proposals concerning the protection of wages, which is the seventh item on the agenda of the session, and

Having determined that these proposals shall take the form of an international Convention,
adopts this first day of July of the year one thousand nine hundred and forty-nine the following Convention, which may be cited as the Protection of Wages Convention, 1949:

Article 1

In this Convention, the term wages means remuneration or earnings, however designated or calculated, capable of being expressed in terms of money and fixed by mutual agreement or by national laws or regulations, which are payable in virtue of a written or unwritten contract of employment by an employer to an employed person for work done or to be done or for services rendered or to be rendered.

Article 2

1. This Convention applies to all persons to whom wages are paid or payable.

2. The competent authority may, after consultation with the organisations of employers and employed persons directly concerned, if such exist, exclude from the application of all or any of the provisions of the Convention categories of persons whose circumstances and conditions of employment are such that the application to them of all or any of the said provisions would be inappropriate and who are not employed in manual labour or are employed in domestic service or work similar thereto.

3. Each Member shall indicate in its first annual report upon the application of this Convention submitted under Article 22 of the Constitution of the International Labour Organisation any categories of persons which it proposes to exclude from the application of all or any of the provisions of the Convention in accordance with the provisions of the preceding paragraph; no Member shall, after the date of its first annual report, make exclusions except in respect of categories of persons so indicated.

4. Each Member having indicated in its first annual report categories of persons which it proposes to exclude from the application of all or any of the provisions of the Convention shall indicate in subsequent annual reports any categories of persons in respect of which it renounces the right to have recourse to the provisions of paragraph 2 of this Article and any progress which may have been made with a view to the application of the Convention to such categories of persons.

Article 3

1. Wages payable in money shall be paid only in legal tender, and payment in the form of promissory notes, vouchers or coupons, or in any other form alleged to represent legal tender, shall be prohibited.

2. The competent authority may permit or prescribe the payment of wages by bank cheque or postal cheque or money order in cases in which payment in this manner is customary or is necessary because of special circumstances, or where a collective agreement or arbitration award so provides, or, where not so provided, with the consent of the worker concerned.

Article 4
1. National laws or regulations, collective agreements or arbitration awards may authorise the partial payment of wages in the form of allowances in kind in industries or occupations in which payment in the form of such allowances is customary or desirable because of the nature of the industry or occupation concerned; the payment of wages in the form of liquor of high alcoholic content or of noxious drugs shall not be permitted in any circumstances.

2. In cases in which partial payment of wages in the form of allowances in kind is authorised, appropriate measures shall be taken to ensure that--
   (a) such allowances are appropriate for the personal use and benefit of the worker and his family; and
   (b) the value attributed to such allowances is fair and reasonable.

**Article 5**

Wages shall be paid directly to the worker concerned except as may be otherwise provided by national laws or regulations, collective agreement or arbitration award or where the worker concerned has agreed to the contrary.

**Article 6**

Employers shall be prohibited from limiting in any manner the freedom of the worker to dispose of his wages.

**Article 7**

1. Where works stores for the sale of commodities to the workers are established or services are operated in connection with an undertaking, the workers concerned shall be free from any coercion to make use of such stores or services.

2. Where access to other stores or services is not possible, the competent authority shall take appropriate measures with the object of ensuring that goods are sold and services provided at fair and reasonable prices, or that stores established and services operated by the employer are not operated for the purpose of securing a profit but for the benefit of the workers concerned.

**Article 8**

1. Deductions from wages shall be permitted only under conditions and to the extent prescribed by national laws or regulations or fixed by collective agreement or arbitration award.

2. Workers shall be informed, in the manner deemed most appropriate by the competent authority, of the conditions under which and the extent to which such deductions may be made.

**Article 9**

Any deduction from wages with a view to ensuring a direct or indirect payment for the purpose of obtaining or retaining employment, made by a worker to an employer or his representative or to any intermediary (such as a labour contractor or recruiter), shall be prohibited.

**Article 10**

1. Wages may be attached or assigned only in a manner and within limits prescribed by national laws or regulations.

2. Wages shall be protected against attachment or assignment to the extent deemed necessary for the maintenance of the worker and his family.

**Article 11**

1. In the event of the bankruptcy or judicial liquidation of an undertaking, the workers employed therein shall be treated as privileged creditors either as regards wages due to them for service rendered during such a period prior to the bankruptcy or judicial liquidation as may be prescribed by national laws or regulations, or as regards wages up to a prescribed amount as may be determined by national laws or regulations.

2. Wages constituting a privileged debt shall be paid in full before ordinary creditors may establish any claim to a share of the assets.
3. The relative priority of wages constituting a privileged debt and other privileged debts shall be determined by national laws or regulations.

**Article 12**

1. Wages shall be paid regularly. Except where other appropriate arrangements exist which ensure the payment of wages at regular intervals, the intervals for the payment of wages shall be prescribed by national laws or regulations or fixed by collective agreement or arbitration award.

2. Upon the termination of a contract of employment, a final settlement of all wages due shall be effected in accordance with national laws or regulations, collective agreement or arbitration award or, in the absence of any applicable law, regulation, agreement or award, within a reasonable period of time having regard to the terms of the contract.

**Article 13**

1. The payment of wages where made in cash shall be made on working days only and at or near the workplace, except as may be otherwise provided by national laws or regulations, collective agreement or arbitration award, or where other arrangements known to the workers concerned are considered more appropriate.

2. Payment of wages in taverns or other similar establishments and, where necessary to prevent abuse, in shops or stores for the retail sale of merchandise and in places of amusement shall be prohibited except in the case of persons employed therein.

**Article 14**

Where necessary, effective measures shall be taken to ensure that workers are informed, in an appropriate and easily understandable manner—

(a) before they enter employment and when any changes take place, of the conditions in respect of wages under which they are employed; and

(b) at the time of each payment of wages, of the particulars of their wages for the pay period concerned, in so far as such particulars may be subject to change.

**Article 15**

The laws or regulations giving effect to the provisions of this Convention shall—

(a) be made available for the information of persons concerned;

(b) define the persons responsible for compliance therewith;

(c) prescribe adequate penalties or other appropriate remedies for any violation thereof;

(d) provide for the maintenance, in all appropriate cases, of adequate records in an approved form and manner.

**Article 16**

There shall be included in the annual reports to be submitted under Article 22 of the Constitution of the International Labour Organisation full information concerning the measures by which effect is given to the provisions of this Convention.

**Article 17**

1. In the case of a Member the territory of which includes large areas where, by reason of the sparseness of the population or the stage of development of the area, the competent authority considers it impracticable to enforce the provisions of this Convention, the authority may, after consultation with the organisations of employers and workers concerned, where such exist, exempt such areas from the application of this Convention either generally or with such exceptions in respect of particular undertakings or occupations as it thinks fit.

2. Each Member shall indicate in its first annual report upon the application of this Convention submitted under Article 22 of the Constitution of the International Labour Organisation any areas in respect of which it proposes to have recourse to the provisions of the present Article and shall give the reasons for which it proposes to have recourse thereto; no Member shall, after the date of its first annual report, have recourse to the provisions of the present Article except in respect of areas so indicated.
3. Each Member having recourse to the provisions of this Article shall, at intervals not exceeding three years, reconsider in consultation with the organisations of employers and workers concerned, where such exist, the practicability of extending the application of the Convention to areas exempted in virtue of paragraph 1.

4. Each Member having recourse to the provisions of this Article shall indicate in subsequent annual reports any areas in respect of which it renounces the right to have recourse to the provisions of this Article and any progress which may have been made with a view to the progressive application of the Convention in such areas.

**Article 18**

The formal ratifications of this Convention shall be communicated to the Director-General of the International Labour Office for registration.

**Article 19**

1. This Convention shall be binding only upon those Members of the International Labour Organisation whose ratifications have been registered with the Director-General.

2. It shall come into force twelve months after the date on which the ratifications of two Members have been registered with the Director-General.

3. Thereafter, this Convention shall come into force for any Member twelve months after the date on which its ratifications has been registered.

**Article 20**

1. Declarations communicated to the Director-General of the International Labour Office in accordance with paragraph 2 of Article 35 of the Constitution of the International Labour Organisation shall indicate --

   a) the territories in respect of which the Member concerned undertakes that the provisions of the Convention shall be applied without modification;

   b) the territories in respect of which it undertakes that the provisions of the Convention shall be applied subject to modifications, together with details of the said modifications;

   c) the territories in respect of which the Convention is inapplicable and in such cases the grounds on which it is inapplicable;

   d) the territories in respect of which it reserves its decision pending further consideration of the position.

2. The undertakings referred to in subparagraphs (a) and (b) of paragraph 1 of this Article shall be deemed to be an integral part of the ratification and shall have the force of ratification.

3. Any Member may at any time by a subsequent declaration cancel in whole or in part any reservation made in its original declaration in virtue of subparagraph (b), (c) or (d) of paragraph 1 of this Article.

4. Any Member may, at any time at which the Convention is subject to denunciation in accordance with the provisions of Article 22, communicate to the Director-General a declaration modifying in any other respect the terms of any former declaration and stating the present position in respect of such territories as it may specify.

**Article 21**

1. Declarations communicated to the Director-General of the International Labour Office in accordance with paragraph 4 or 5 of Article 35 of the Constitution of the International Labour Organisation shall indicate whether the provisions of the Convention will be applied in the territory concerned without modification or subject to modifications; when the declaration indicates that the provisions of the Convention will be applied subject to modifications, it shall give details of the said modifications.

2. The Member, Members or international authority concerned may at any time by a subsequent declaration renounce in whole or in part the right to have recourse to any modification indicated in any former declaration.

3. The Member, Members or international authority concerned may, at any time at which this Convention is subject to denunciation in accordance with the provisions of Article 22,
communicate to the Director-General a declaration modifying in any other respect the terms of any former declaration and stating the present position in respect of the application of the Convention.

**Article 22**

1. A Member which has ratified this Convention may denounce it after the expiration of ten years from the date on which the Convention first comes into force, by an act communicated to the Director-General of the International Labour Office for registration. Such denunciation shall not take effect until one year after the date on which it is registered.

2. Each Member which has ratified this Convention and which does not, within the year following the expiration of the period of ten years mentioned in the preceding paragraph, exercise the right of denunciation provided for in this Article, will be bound for another period of ten years and, thereafter, may denounce this Convention at the expiration of each period of ten years under the terms provided for in this Article.

**Article 23**

1. The Director-General of the International Labour Office shall notify all Members of the International Labour Organisation of the registration of all ratifications, declarations and denunciations communicated to him by the Members of the Organisation.

2. When notifying the Members of the Organisation of the registration of the second ratification communicated to him, the Director-General shall draw the attention of the Members of the Organisation to the date upon which the Convention will come into force.

**Article 24**

The Director-General of the International Labour Office shall communicate to the Secretary-General of the United Nations for registration in accordance with Article 102 of the Charter of the United Nations full particulars of all ratifications, declarations and acts of denunciation registered by him in accordance with the provisions of the preceding Articles.

**Article 25**

At such times as it may consider necessary the Governing Body of the International Labour Office shall present to the General Conference a report on the working of this Convention and shall examine the desirability of placing on the agenda of the Conference the question of its revision in whole or in part.

**Article 26**

1. Should the Conference adopt a new Convention revising this Convention in whole or in part, then, unless the new Convention otherwise provides:
   a) the ratification by a Member of the new revising Convention shall ipso jure involve the immediate denunciation of this Convention, notwithstanding the provisions of Article 22 above, if and when the new revising Convention shall have come into force;
   b) as from the date when the new revising Convention comes into force this Convention shall cease to be open to ratification by the Members.

2. This Convention shall in any case remain in force in its actual form and content for those Members which have ratified it but have not ratified the revising Convention.

**Article 27**

The English and French versions of the text of this Convention are equally authoritative.

**Cross references**


Constitution: 35:article 35 of the Constitution of the International Labour Organisation

Revised: C173 The Convention was partially revised in 1992 by Convention No 173
C173 Protection of Workers' Claims (Employer's Insolvency) Convention, 1992

Convention concerning the Protection of Workers' Claims in the event of the Insolvency of their Employer (Note: Date of coming into force: 08:06:1995.)

Preamble

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its 79th Session on 3 June 1992, and
Stressing the importance of the protection of workers' claims in the event of the insolvency of their employer and recalling the provisions on this subject in Article 11 of the Protection of Wages Convention, 1949, and Article 11 of the Workmen's Compensation (Accidents) Convention, 1925, and
Noting that, since the adoption of the Protection of Wages Convention, 1949, greater value has been placed on the rehabilitation of insolvent enterprises and that, because of the social and economic consequences of insolvency, efforts should be made where possible to rehabilitate enterprises and safeguard employment, and
Noting that since the adoption of the aforementioned standards, significant developments have taken place in the law and practice of many Members which have improved the protection of workers' claims in the event of insolvency of their employer, and considering that it would be timely for the Conference to adopt new standards on the subject of workers' claims, and
Having decided upon the adoption of certain proposals with regard to the protection of workers' claims in the event of the insolvency of their employer, which is the fourth item on the agenda of the session, and
Having determined that these proposals shall take the form of an international Convention;
adopts this twenty-third day of June of the year one thousand nine hundred and ninety-two the following Convention, which may be cited as the Protection of Workers' Claims (Employer's Insolvency) Convention, 1992.

PART I. GENERAL PROVISIONS

Article 1
1. For the purposes of this Convention, the term insolvency refers to situations in which, in accordance with national law and practice, proceedings have been opened relating to an employer's assets with a view to the collective reimbursement of its creditors.
2. For the purposes of this Convention, a Member may extend the term "insolvency" to other situations in which workers' claims cannot be paid by reason of the financial situation of the employer, for example where the amount of the employer's assets is recognised as being insufficient to justify the opening of insolvency proceedings.
3. The extent to which an employer's assets are subject to the proceedings referred to in paragraph 1 above shall be determined by national laws, regulations or practice.

Article 2
The provisions of this Convention shall be applied by means of laws or regulations or by any other means consistent with national practice.
Article 3

1. A Member which ratifies this Convention shall accept either the obligations of Part II, providing for the protection of workers' claims by means of a privilege, or the obligations of Part III, providing for the protection of workers' claims by a guarantee institution, or the obligations of both Parts. This choice shall be indicated in a declaration accompanying its ratification.

2. A Member which has initially accepted only Part II or only Part III of this Convention may thereafter, by a declaration communicated to the Director-General of the International Labour Office, extend its acceptance to the other Part.

3. A Member which accepts the obligations of both Parts of this Convention may, after consulting the most representative organisations of employers and workers, limit the application of Part III to certain categories of workers and to certain branches of economic activity. Such limitations shall be specified in the declaration of acceptance.

4. A Member which has limited its acceptance of the obligations of Part III in accordance with paragraph 3 above shall, in its first report under article 22 of the Constitution of the International Labour Organisation, give the reasons for limiting its acceptance. In subsequent reports it shall provide information on any extension of the protection under Part III of this Convention to other categories of workers or other branches of economic activity.

5. A Member which has accepted the obligations of Parts II and III of this Convention may, after consulting the most representative organisations of employers and workers, exclude from the application of Part II those claims which are protected pursuant to Part III.

6. Acceptance by a Member of the obligations of Part II of this Convention shall ipso jure involve the termination of its obligations under Article 11 of the Protection of Wages Convention, 1949.

7. A Member which has accepted only the obligations of Part III of this Convention may, by a declaration communicated to the Director-General of the International Labour Office, terminate its obligations under Article 11 of the Protection of Wages Convention, 1949, in respect of those claims which are protected pursuant to Part III.

Article 4

1. Subject to the exceptions provided for in paragraph 2 below, and to any limitations specified in accordance with Article 3, paragraph 3, this Convention shall apply to all employees and to all branches of economic activity.

2. The competent authority, after consulting the most representative organisations of employers and workers, may exclude from Part II, Part III or both Parts of this Convention specific categories of workers, in particular public employees, by reason of the particular nature of their employment relationship, or if there are other types of guarantee affording them protection equivalent to that provided by the Convention.

3. A Member availing itself of the exceptions provided for in paragraph 2 above shall, in its reports under article 22 of the Constitution of the International Labour Organisation, provide information on such exceptions, giving the reasons therefor.
PART II. PROTECTION OF WORKERS' CLAIMS BY MEANS OF A PRIVILEGE

PROTECTED CLAIMS

Article 5
In the event of an employer's insolvency, workers' claims arising out of their employment shall be protected by a privilege so that they are paid out of the assets of the insolvent employer before non-privileged creditors can be paid their share.

Article 6
The privilege shall cover at least:
(a) the workers' claims for wages relating to a prescribed period, which shall not be less than three months, prior to the insolvency or prior to the termination of the employment;
(b) the workers' claims for holiday pay due as a result of work performed during the year in which the insolvency or the termination of the employment occurred, and in the preceding year;
(c) the workers' claims for amounts due in respect of other types of paid absence relating to a prescribed period, which shall not be less than three months, prior to the insolvency or prior to the termination of the employment;
(d) severance pay due to workers upon termination of their employment.

LIMITATIONS

Article 7
1. National laws or regulations may limit the protection by privilege of workers' claims to a prescribed amount, which shall not be below a socially acceptable level.
2. Where the privilege afforded to workers' claims is so limited, the prescribed amount shall be adjusted as necessary so as to maintain its value.

RANK OF PRIVILEGE

Article 8
1. National laws or regulations shall give workers' claims a higher rank of privilege than most other privileged claims, and in particular those of the State and the social security system.
2. However, where workers' claims are protected by a guarantee institution in accordance with Part III of this Convention, the claims so protected may be given a lower rank of privilege than those of the State and the social security system.

PART III. PROTECTION OF WORKERS' CLAIMS BY A GUARANTEE INSTITUTION

GENERAL PRINCIPLES

Article 9
The payment of workers' claims against their employer arising out of their employment shall be guaranteed through a guarantee institution when payment cannot be made by the employer because of insolvency.

Article 10
In giving effect to this Part of the Convention, a Member may, after consulting the most representative organisations of employers and workers, adopt appropriate measures for the purpose of preventing possible abuse.

Article 11
1. The organisation, management, operation and financing of wage guarantee institutions shall be determined pursuant to Article 2.
2. The preceding paragraph shall not prevent a Member, in accordance with its particular characteristics and needs, from allowing insurance companies to provide the protection referred to in Article 9, as long as they offer sufficient guarantees.

CLAIMS PROTECTED BY A GUARANTEE INSTITUTION

Article 12
The workers' claims protected pursuant to this Part of the Convention shall include at least:

(a) the workers' claims for wages relating to a prescribed period, which shall not be less than eight weeks, prior to the insolvency or prior to the termination of the employment;

(b) the workers' claims for holiday pay due as a result of work performed during a prescribed period, which shall not be less than six months, prior to the insolvency or prior to the termination of employment;

(c) the workers' claims for amounts due in respect of other types of paid absence relating to a prescribed period, which shall not be less than eight weeks, prior to the insolvency or prior to the termination of employment;

(d) severance pay due to workers upon termination of their employment.

Article 13
1. Claims protected pursuant to this Part of the Convention may be limited to a prescribed amount, which shall not be below a socially acceptable level.

2. Where the claims protected are so limited, the prescribed amount shall be adjusted as necessary so as to maintain its value.

PROVISIONS

Article 14
This Convention revises the Protection of Wages Convention, 1949, to the extent provided for in Article 3, paragraphs 6 and 7 above, but does not close that Convention to further ratifications.

Article 15
The formal ratifications of this Convention shall be communicated to the Director-General of the International Labour Office for registration.

Article 16
1. This Convention shall be binding only upon those Members of the International Labour Organisation whose ratifications have been registered with the Director-General.

2. It shall come into force twelve months after the date on which the ratifications of two Members have been registered with the Director-General.

3. Thereafter, this Convention shall come into force for any Member twelve months after the date on which its ratification has been registered.

Article 17
1. A Member which has ratified this Convention may denounce it after the expiration of ten years from the date on which the Convention first comes into force, by an act communicated to the Director-General of the International Labour Office for registration. Such denunciation shall not take effect until one year after the date on which it is registered.

2. Each Member which has ratified this Convention and which does not, within the year following the expiration of the period of ten years mentioned in the preceding paragraph, exercise the right of denunciation provided for in this Article, will be bound for another period of ten years and, thereafter, may denounce this Convention at the expiration of each period of ten years under the terms provided for in this Article.
Article 18
1. The Director-General of the International Labour Office shall notify all Members of the International Labour Organisation of the registration of all ratifications and denunciations communicated to him by the Members of the Organisation.

2. When notifying the Members of the Organisation of the registration of the second ratification communicated to him, the Director-General shall draw the attention of the Members of the Organisation to the date upon which the Convention will come into force.

Article 19
The Director-General of the International Labour Office shall communicate to the Secretary-General of the United Nations for registration in accordance with article 102 of the Charter of the United Nations full particulars of all ratifications and acts of denunciation registered by him in accordance with the provisions of the preceding Articles.

Article 20
At such times as it may consider necessary, the Governing Body of the International Labour Office shall present to the General Conference a report on the working of this Convention and shall examine the desirability of placing on the agenda of the Conference the question of its revision in whole or in part.

Article 21
1. Should the Conference adopt a new Convention revising this Convention in whole or in part, then, unless the new Convention otherwise provides

   (a) the ratification by a Member of the new revising Convention shall ipso jure involve the immediate denunciation of this Convention, notwithstanding the provisions of Article 17 above, if and when the new revising Convention shall have come into force;

   (b) as from the date when the new revising Convention comes into force this Convention shall cease to be open to ratification by the Members.

2. This Convention shall in any case remain in force in its actual form and content for those Members which have ratified it but have not ratified the revising Convention.

Article 22
The English and French versions of the text of this Convention are equally authoritative.

Cross references
Conventions: C017 Workmen's Compensation (Accidents) Convention, 1925
Revised: C095 This Convention partially revises the Protection of Wages Convention, 1949