



# Childcare in Central America

LEGAL REQUIREMENTS AND INTERNATIONAL CONVENTIONS



This document was prepared by the Maquila Solidarity Network (MSN) as a resource for Central American women's and trade union organizations and the members of the Americas Group, a multi-stakeholder forum in which MSN participates. It provides comparative information on the legal rights of workers and obligations of employers concerning childcare for the children of maquila workers in Honduras, Nicaragua, El Salvador and Guatemala. The document also references international standards on childcare as well as those of labour standards monitoring organizations.

*English translations are not official government translations.*





## HONDURAS:



### Honduran Labour Code

#### Article 142

Every employer with more than 20 workers is obligated to provide a space to allow women workers to feed their children under three (3) years of age, and to leave their children during working hours under the care of a suitable person who has been designated for this task and is paid for that purpose. Said facility should have a basic set up, within the economic means of the employer, and under the discretion and approval of the Labour Inspection Office.

### Law for Equal Opportunities for Women

#### Article 59

Employers are obligated to facilitate the adaptation of areas so that they meet the basic necessities in the workplace (restrooms, cafeterias, food pantries, medical clinic, and childcare centres). With regards to the childcare centers, this is required of any employer with more than 30 female workers, along with support from the parents, in keeping with their economic ability to provide such support, in order to care for children of the workers under the age of seven (7).

### Regulation of the Equal Opportunities for Women Law, 2008

#### Article 23

All employers who have at their services more than thirty workers are required, in each of their establishments that meet this condition, to provide, at their expense, a daycare center and nursery approved by the General Labor Inspectorate in order to care for the children of their workers who are under the age of seven. Appropriate staff will care for the children during working hours. The National Institute for Women may, at any time during the workday, inspect these centers without prior notice and verify the quality of service that is being offered.

## Child and Adolescence Code

### Article 138

The Secretariat of Labour and Social Provision and the Secretariat of Public Health and Social Assistance, together with the National Board of Social Welfare, will jointly adopt the measures necessary to provide care in daycare centers during the workday for children whose parents or legal representatives work.

These institutions will ensure that said daycare centers have the facilities necessary so that the child's stay will be beneficial, taking into consideration the child's age and physical and mental state. In all cases, these services should provide stimulation of the child's development, adequately meet the basic needs of health and nutrition, and contribute to a sustained psychosocial improvement.

Those who work in the establishments that care for the children should receive special training in order to comply with their functions.

### Tripartite Agreement setting salaries in the maquila sector, 2015-2018

*Acuerdo de la STSS No. STSS-618 2014 (2015 - 2018)*

Spanish: [www.presidencia.gob.hn/?p=4464](http://www.presidencia.gob.hn/?p=4464)

English: [translation](#)

### Point Five

The Honduran Manufacturers Association (AHM), the Trade Union Centers (CGT, CUTH and CTH), commit to continue making efforts for and to put into effect the Community Child Daycare Center pilot program to serve the textile manufacturing sector workers, for which the pertinent bases and conditions will be established within the bipartite commission, beginning the program in the city of Choloma, and expanding it by the beginning of the second year of effect of the present agreement to the cities of San Pedro Sula and Villanueva.

On the other hand, the Government Department of Labor and Social Security commits to support both sectors in defining the technical and logistic aspects that should be observed in said child daycare centers for their suitable functioning.

It is expressly understood that regarding Child Daycare Centers and other benefits that the Labor Code grants to the working sector, their claim and surveillance corresponds to the Trade Union Centers; thus, they agree to address the matter at the Bipartite and Tripartite Commission, which will guide, analyze and address it according to the Code of Childhood, the International Agreements and the needs of the working mothers of such sector.

## Multi-Stakeholder Initiatives on Childcare Responsibilities of Employers in Honduras

Both the Fair Labor Association (FLA) and the Worker Rights Consortium (WRC) have begun to report on factory non-compliance with Honduran law regarding employer obligations to provide childcare facilities.

In 2014, the FLA published three external assessment reports that found noncompliance with Honduran laws and regulations on responsibilities of employers to provide childcare for their workers. The reports also cited FLA Non-Discrimination Benchmark 8.1, Protection and Accommodation of Pregnant Workers and New Mothers. In all three reports, the FLA recommended that management should consider the creation of a childcare facility near the workplace that is consistent with local regulations, and that management should also consider the creation of a mechanism to foster dialogue with industry associations, government institutions, workers' advocacy groups and other stakeholders to develop strategies to facilitate compliance with the law. To date, no external assessment reports for 2015 have been published. Prior to 2014, failure to provide childcare was cited in some FLA inspection reports but not on a consistent basis.

In 2015, the WRC published two investigative reports that found noncompliance with Honduran laws and regulations on the responsibilities of employers to provide workplace childcare for their workers. In both reports, the WRC recognized the provisions of the tripartite agreement for a childcare pilot project (see box), but concluded that participation in that process was not sufficient to meet the legal requirements to provide childcare services. It recommended that within 12 months, the employers in both cases make a good-faith effort to establish, or identify and contract a childcare centre to provide care for workers' children.



# GUATEMALA



## Guatemala Labour Code

### Article 155

Every employer with more than 30 workers is obligated to provide a space to allow women workers to safely feed their children under three years of age, and to leave their children during working hours under the care of an appropriate person appointed and paid by the employer. Said facility should have a basic set up, within the economic means of the employer, and under the discretion and approval of the Labour Inspection Office.

*Note: Same text as Honduras except that in Guatemala the requirement is for companies with more than 30 workers.*

### Article 153

Every woman worker who is breastfeeding can do so in her workplace for half an hour, twice daily during the workhours, with the objective of feeding her child. The breastfeeding worker will be able to accumulate dos half hours to which she has the right and enter an hour after the beginning of the work day or leave one hour before the end of the work day, with the objective of feeding her young son or daughter. Said hour will be remunerated and the failure to do so will lead to a corresponding fine against the employer.

The breastfeeding period should be calculated from the day the mother returns to work and up to 10 months afterwards, unless medically prescribed that it be extended.



## NICARAGUA

### Nicaragua Labour Code

#### Article 143

The employer will provide adequate places and seating for use by breastfeeding workers. In work centres with more than thirty women worker, the employer must put in place or build an appropriate venue so that the women workers can breastfeed their children. Woman workers can breastfeed in the workplace for fifteen minutes every three hours over the work day. That time must be calculated as paid work.





## EL SALVADOR

### Article 42 of the CONSTITUTION of the Republic (1983), Inciso 2:

The laws will regulate employers' obligation to set up and maintain childcare centres ("*salas cunas*" and "*lugares de custodia*" in Spanish) for workers' children.



### Regulations Pending

Since the constitution was approved, more than thirty years ago, the National Assembly (*Asamblea Legislativa*) has yet to approve a law to implement and regulate the functioning of childcare centres in El Salvador.

#### Update:

On November 14, 2017, the El Salvador Constitutional Chamber of the Supreme Court of Justice instructed the Legislative Assembly to issue a law that regulates the "installation and maintenance of nurseries and childcare facilities for the children of workers, as mandated by the Constitution..." The deadline for the adoption of this regulation was set at May 31, 2018.





## INTERNATIONAL INSTRUMENTS WITH REFERENCES TO CHILDCARE

*Three international conventions recognize the fact that working parents need outside support in coping with childcare and call for the provision of childcare facilities.*



### UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), 1979

#### Article 11 2(c)

States Parties shall take appropriate measures to encourage the provision of the necessary supporting social services to enable parents to combine family obligations with work responsibilities and participation in public life, in particular through promoting the establishment and development of a network of child-care facilities.

*Nicaragua and El Salvador ratified in 1981; Guatemala in 1982 and Honduras in 1983.*

## ILO Convention 156 on Workers with Family Responsibilities, 1981

### Article 5

All measures compatible with national conditions and possibilities shall further be taken to:

- (a) Take account of the needs of workers with family responsibilities in community planning; and
- (b) Develop or promote community services, public or private, such as child-care and family services and facilities.

*Only two countries in Central America have ratified Guatemala ratified the convention in 1994; El Salvador in 2000.*

## UN Convention on the Rights of the Child (CRC), 1990

### Article 7

All measures compatible with national conditions and possibilities, including measures in the field of vocational guidance and training, shall be taken to enable workers with family responsibilities to become and remain integrated in the labour force, as well as to re-enter the labour force after an absence due to those responsibilities.

### Article 18

1. States Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. Parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern.

2. For the purpose of guaranteeing and promoting the rights set forth in the present Convention, States Parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of children.

3. States Parties shall take all appropriate measures to ensure that children of working parents have the right to benefit from child-care services and facilities for which they are eligible.

*El Salvador, Nicaragua, Honduras and Guatemala ratified the convention in 1990.*

## ILO Comparative Study on Childcare

One excellent resource on workplace-related childcare is the 2010 ILO study *Workplace Solutions for Childcare*. This 480-page study compares laws and regulations concerning responsibilities of employers and the state to provide childcare services for working parents in a variety of countries, and assesses the advantages and disadvantages of different types of childcare – workplace, community, home-based childminders, as well as options to fund such services. It includes 10 country case studies – Brazil, Chile, France, Hungary, India, Kenya, South Africa, Thailand, United Kingdom, and United States. The report is available in English and Spanish. The English is available at: [www.ilo.org/wcmsp5/groups/public/@dgreports/@dcomm/@publ/documents/publication/wcms\\_110397.pdf](http://www.ilo.org/wcmsp5/groups/public/@dgreports/@dcomm/@publ/documents/publication/wcms_110397.pdf)