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Geneva, Switzerland

Legislative Series
1927 — Sp. 5

SPAIN 5

Decrees: Employment of Women at Night

A) *Real decreto-ley relativo al descanso nocturno de la mujer obrera. 15 de Agosto de 1927. (Gaceta de Madrid, 19 Agosto 1927, año CCLXVI, tomo III, núm. 231, pág. 1012.)*

**Legislative Decree respecting nightly rest for women workers.
Dated 15th August, 1927.**

1. For the purpose of the observance of the provisions laid down in this Legislative Decree —

“domestic service” (servicio doméstico) shall be deemed to mean domestic service as defined in section 147 of the Labour Code¹;

“homework” (trabajo a domicilio) shall be deemed to mean homework as defined in the first paragraph of section 1 of the Legislative Decree of 26th July, 1926²;

“family workshop” (taller de familia) shall be deemed to mean a workshop as defined under no. 1 of section 3 of the last-mentioned Legislative Decree;

“night” (noche) or “night period” (periodo nocturno) shall be deemed to mean the period from 9 p.m. to 5 a.m. on the following morning;

“employment at night” (trabajo nocturno) shall be deemed to mean work performed during the period specified in the preceding paragraph.

2. A continuous rest period of not less than twelve consecutive hours between every two consecutive working days shall be granted to all women (irrespective of age) employed in factories, workshops and other industrial and commercial undertakings and establishments. The said rest period shall be granted without prejudice to the restrictions of the hours of work fixed for women according to their age by the legislative provisions in force.

The provision laid down in the preceding paragraph shall not apply to women employed in domestic service, women engaged in homework and women employed in family workshops.

3. In view of special conditions in a particular industry, the rest period referred to in the preceding section may be reduced by not more than one hour on not more than sixty days in the year, by a decision of the joint committee concerned, or in default of such committee by the local office of the Labour Council, after consultation with the employers and workers concerned.

4. The rest period provided for above shall always cover the hours of the night as defined in section 1, save in the exceptional cases specified in the following sections.

These exceptions shall be allowed without prejudice to the minimum duration of the rest period or its continuity.

¹ Legislative Series, 1926 (Sp. 5).

² Legislative Series, 1926 (Sp. 4).

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5. In cases of *force majeure*, when in any undertaking there occurs an interruption of work which it was impossible to foresee, the women workers in the factory in which the accident has occurred may be employed during the night as a special measure, provided that the requirements laid down in the Regulations respecting the establishment of the grounds for such a measure are satisfied.

6. The employment of women at night may be permitted, to the extent and for the time strictly necessary, in agricultural industries and in processes in which materials liable to rapid deterioration are ordinarily used, provided that there is no other way of preventing the loss of the said materials.

Permits for this shall be granted in every locality in a uniform manner for all factories and workshops in the same industry, by the joint committee concerned, or in default of such committee by the local office of the Labour Council.

The Regulations shall prescribe the form in which applications for such permits shall be made and the relevant procedure, and shall also lay down rules for appeals against the decisions of the said bodies.

7. In philanthropic institutions, hospitals, nursing homes, sanatoria, asylums and other similar establishments, the management of the particular establishment concerned may conclude an agreement with the women employees to provide that the rest period prescribed in this Legislative Decree shall include only half the hours of the night or that the rest period shall include the whole of the night on alternate days only.

8. Similarly, in the case of women employed in public transport and communication services, places of public entertainment and the commercial establishments covered by section 3 of the Act of 4th July, 1918³, the night may be reduced from the normal period of eight hours to not less than four hours.

9. In factories, workshops or undertakings in which the two-shift system has been established or is hereafter established for day work, if women are employed in the said shifts, the night period provided for in section 1 may be reduced to the period from 9.30 p. m. to 4.30 a. m. on the following day or from 10 p. m. to 5 a. m. on the following day, provided in both cases that each shift shall have during its statutory hours of work an uninterrupted break of not less than half an hour, which shall be granted to all the workers of the shift at the same time and fixed in such a way that neither of the working periods exceeds five hours. This break of half an hour shall be granted in addition to the break prescribed by the legislation in force for women workers who are nursing their children; during the said break the workers shall be free to leave their workplace.

If, in conformity with the legislative provisions in force, it is decided in the factories and workshops covered by this section to suspend work on holidays other than Sundays, and if the hours thus lost are made up by an extension of the hours of work of each shift on the working days, the night may be reduced by the time necessary to make up the time

³ Bulletin of the International Labour Office (Basle), vol. XIII, 1918, p. 30.

thus lost, provided that the reduction shall not exceed the reduction already authorised in the preceding paragraph by more than half an hour.

10. Contraventions of the provisions of this Legislative Decree and of the Regulations for the administration thereof shall be punished by fines of not less than 25 nor more than 250 pesetas, which shall be imposed on the employers alone, except in cases where it is obvious that the employers and their representatives are not responsible.

In case of a repetition of the offence, the fines shall be double the amounts fixed for the first offence.

11. Any employer who has been notified that a fine for a contravention has been imposed upon him by a definitive sentence shall be deemed to be guilty of a repetition of the offence if he commits a similar contravention within a year reckoned from the day following the date of the said notification.

12. Prosecutions for contraventions shall not be instituted more than one year from the date of the contravention. This period of prescription shall be interrupted by the laying of information or any other action taken for this purpose by the administrative authorities, by the labour inspectorate or by the bodies subsidiary to the labour inspectorate; it shall begin to run again from the date on which the final proceedings are taken in the matter.

13. The procedure laid down in rule 14 of section 246 of the Labour Code shall be followed with respect to the reporting of contraventions and the imposition and enforcement of fines.

14. When the persons concerned are notified of the definitive judicial sentences in cases of contraventions, the judges giving the said sentences shall also communicate them to the labour inspectors or the local offices of the Labour Council by whom or which the proceedings were instituted.

15. If a person guilty of a contravention on whom the judge of first instance has imposed a fine on the recommendation of the labour inspectorate does not desire to appeal, and pays the fine within a period of five days reckoned from the date of the notification, he shall not be required to make any other payment, and the costs shall in this case be defrayed out of public moneys.

The expenses of notification shall be deducted from the amount of the fine, provided that they shall not in any case exceed 25 per cent. thereof or 10 pesetas in all.

16. Fines shall be paid in legal currency, and the judge after deducting the expenses of notification shall hand over the balance to the President of the National Provident Institution to be utilised for the welfare of the working classes.

Additional sections.

1. The provisions of sections 11-16 of this Legislative Decree shall apply generally with respect to all laws for the regulation of the conditions of employment.

2. The Act of 11th July, 1912⁴, and any other provisions hitherto in force which are contrary to the provisions of this Legislative Decree are hereby repealed.

3. Within one month the Ministry of Labour, Commerce and Industry shall issue Regulations for the administration of this Legislative Decree, which shall come into operation on 1st October of this year. Nevertheless, if in any of the factories in the textile industry situated in the mountain regions of Catalonia the carrying out of the provisions of this Legislative Decree and the Regulations thereunder is rendered difficult by special circumstances, the managers of the said factories may, within a month reckoned from the publication of the Regulations, submit an application to the Ministry of Labour, Commerce and Industry (giving the reasons for their application and proof of the facts alleged by them) for an extension of the time limit for the carrying out of the Legislative Decree and the Regulations for the period necessary for more satisfactory compliance with the provisions laid down in the Legislative Decree; such an extension shall not be authorised until the necessary inquiries have been made and the Labour Council has been heard.

B) *Real Decreto aprobando el Reglamento para la aplicación del decreto-ley de 15 de Agosto último, sobre descanso nocturno de la mujer obrera. 6 de Septiembre de 1927. (Gaceta de Madrid, 13 Septiembre 1927, año CCLXVI, tomo III, núm. 256, pág. 1477.)*

Royal Decree to approve the Regulations for the administration of the Legislative Decree of 15th August last⁵, respecting nightly rest for women workers. Dated 6th September, 1927.

On the recommendation of the Minister of Labour, Commerce and Industry and in agreement with Our Council of Ministers, We hereby approve the appended Regulations for the administration of the Legislative Decree of 15th August, 1927⁵, respecting nightly rest for women workers.

Regulations for the administration of the Legislative Decree of 15th August, 1927, respecting nightly rest for women workers.

1. In order to ensure the rest period prescribed in the Legislative Decree of 15th August, 1927, the hours during which the employment of women is absolutely prohibited shall be fixed in each locality in a uniform manner for the establishments in each branch of industry in which women are employed, always subject to the provisions laid down in sections 2, 3 and 4 of the Legislative Decree.

2. The joint committee for the industry in question shall fix the hours of rest for women as provided in the preceding section; in default of such committee the hours shall be fixed by means of agreements concluded between the employers and workers concerned, subject to the rules laid down in the Regulations of 17th December, 1926, with respect to agreements concluded for the carrying out of the Sunday Rest Act⁶.

⁴ Bulletin of the International Labour Office (Basle), vol. VII, 1912, p. 398.

⁵ See p. 1 above.

⁶ Legislative Series, 1926 (Sp. 7).

In default both of a decision of the joint committee and of a valid agreement, the hours of rest shall be fixed by the local office of the Labour Council after hearing the employers and workers concerned through the trade associations formed by them. Individual employers and workers shall not be heard, except where no associations exist.

3. In the case of commercial establishments covered by the provisions of the Act of 4th July, 1918³, the hours of rest prescribed for women shall always be in conformity with the rest period already or hereafter fixed for commercial employees in pursuance of the provisions of the said Act.

4. The reduction of the rest period prescribed for women workers which is authorised by section 3 of the Legislative Decree may be of a general character and uniform for all establishments in a particular branch of industry or commerce in the same locality, or it may be granted to a particular establishment in view of special and extraordinary circumstances.

In the first case the reduction shall be applied for and granted in the manner prescribed in section 6 of these Regulations. In the second case the employer shall apply for the authorisation of the joint committee or in default of such committee that of the local office of the Labour Council, and shall give the reasons for his application; the said bodies shall decide after making any inquiries which they deem desirable.

5. In the cases of *force majeure* referred to in section 5 of the Legislative Decree, the employer or his representative shall report the facts of the case to the president of the local office of the Labour Council within a time limit of not more than 24 hours reckoned from the time at which the employment of women at night began in virtue of the said exception, and shall state the grounds justifying the same.

The president of the local office of the Labour Council shall take the necessary steps to verify the facts alleged, and if he considers the exception justified shall confirm it for the time strictly necessary and shall communicate his decision to the labour inspector and to the local office for the necessary action. If the president of the local office considers that *force majeure* justifying the employment of women at night was not present, he shall convene the local office in order that the latter, after hearing the labour inspectorate, may decide and may take the necessary measures for the enforcement of the legislative provisions, and a report on the contravention shall be drawn up if the office confirms the opinion of the president.

If there is a joint committee for the industry, the powers and duties of the local office of the Labour Council and of the president thereof shall be exercised by the said joint committee and its chairman.

6. The permit referred to in section 6 of the Legislative Decree shall be subject to the recommendation of the employers' representatives on the joint committee for the industry in question, and the said body shall decide respecting the application.

In default of a committee, the lawfully constituted employers' associations for the branch of industry concerned, or in default of such

the owners of the undertakings, workshops or factories concerned, shall apply for such permit to the president of the local office of the Labour Council.

Both the recommendations of the employers' members of the joint committee and the applications made to the presidents of the local offices shall state the reasons justifying the employment of women at night, and shall further state whether the employment is to be of a recurring character or only occasional and at certain seasons or on certain days.

The recommendations or applications shall be communicated, in the manner customary in the locality for public notices, to the employers and workers concerned; the said employers and workers, and also the trade associations formed by them, may state their views to the joint committee or the local office of the Labour Council, whichever body is competent to decide, within a fortnight reckoned from the date of the notice. The joint committee or local office shall issue its decision within a fortnight after the expiry of the above-mentioned time limit.

The decision shall apply generally to all workshops, factories, undertakings or establishments in the branch of industry concerned.

7. In pursuance of the exception laid down in section 7 of the Legislative Decree, the establishments covered by the said section shall also be exceptions to the provisions of sections 1 and 2 of these Regulations, and the agreements concluded between the management and the women workers employed in each of the said establishments with respect to the fixing of the hours of rest shall be valid within the limits of the said exception; provided that the said hours shall be fixed as a rule for each establishment for periods of three or more months at a time and shall be communicated to the local office of the Labour Council and to the labour inspectorate within three days of their coming into operation.

If it is necessary on account of *force majeure* to suspend the normal hours fixed by agreement by taking advantage of the exception provided for in section 5 of the Legislative Decree, the management of the establishment shall proceed in the manner laid down in section 5 of these Regulations.

8. Reductions of the night period to be covered by the rest period prescribed for women workers, as specified in sections 8 and 9 of the Legislative Decree, shall be authorised or granted by the same bodies or representatives and by the procedure and in the manner laid down in section 6 of these Regulations.

9. The decisions of the joint committees and the agreements concluded in due form by the employers and workers concerned in pursuance of the provisions of these Regulations shall be communicated to the local office of the Labour Council and to the labour inspectorate. If the decisions are adopted by the local office, they shall be published in the manner customary for public notices in the locality and communicated to the provincial labour inspectorate and to the General Directorate of Labour and Social Welfare.

10. The parties concerned and the local offices of the Labour Council may lodge appeals, as provided in the Legislative Decree of 26th No-

vember, 1926⁸, respecting the national corporative organisation of industry, against the decisions or resolutions adopted by the joint committees for the administration of the Legislative Decree and these Regulations.

In the case of decisions or resolutions adopted by the local offices of the Labour Council, the joint committees and the employers and workers in the branch of industry concerned may appeal within a fortnight to the Ministry of Labour, Commerce and Industry, which shall decide after consulting the standing committee of the Labour Council.

11. In all the establishments covered by the provisions of the Legislative Decree and these Regulations, a copy of both measures and a time-table showing the distribution of the hours of work and of the rest periods prescribed for the women workers employed in the said establishments shall be posted up in a conspicuous position, and reference shall be made thereon to the decisions of the joint committees or local offices which have authorised the said time-tables.

12. In conformity with the provisions of section 10 of the Legislative Decree, contraventions of the Act and of these Regulations shall be punished by fines of not less than 25 nor more than 250 pesetas and in case of repetition of the offence by fines of double the amount imposed for a first offence.

Transitional sections.

1. Since the provisions of the Legislative Decree and of these Regulations respecting the rest period of women workers are to come into operation on 1st October of this year, the joint committees already in existence, and where there are no such committees the authorised representatives of the employers and workers in each industry in which women are employed, shall communicate to the competent local offices of the Labour Council and the competent provincial labour inspectorates within the first fortnight of September the system agreed upon for the putting into operation of the said rest periods.

The local offices of the Labour Council shall decide within the second fortnight of September respecting the system to be applied in those industries for which no decision in the matter, whether adopted by joint committees or as a result of an agreement between the employers and workers, has been communicated to it; the local offices shall publish their decisions in the manner specified in section 9 of these Regulations before 1st October.

2. As from the date of the publication of these Regulations the parties concerned may apply for the exceptions provided for in sections 3, 6, 8 and 9 of the Legislative Decree in conformity with the provisions laid down in sections 4, 6 and 8 of these Regulations.

The joint committees already in existence, and in default thereof the local offices of the Labour Council, shall deal with the recommendations or applications submitted to them within the time limits specified in section 6.

⁸ Legislative Series, 1926 (Sp. 6).

3. In conformity with the provision laid down in section 3 of the additional sections of the Legislative Decree, within a period of one month reckoned from the date of the promulgation of these Regulations the managers of textile factories in the mountain regions of Catalonia may send in to the Ministry of Labour Commerce and Industry the applications referred to in the said section. After the expiry of this time limit applications of this kind shall not be considered.

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