

## ISSUE BRIEF

The FLA is a multi-stakeholder organization combining the efforts of businesses, universities, and civil-society organizations to improve conditions for workers around the world. Occasionally, the FLA publishes briefs on current issues in the global supply chain. We intend for these briefs to provide an overview of the various perspectives on a given issue. At all times, the FLA expects its business affiliates to comply with all legal requirements, as well as the provisions of its Workplace Code of Conduct.

### NEW LAW ON EMPLOYER-SPONSORED CHILDCARE IN EL SALVADOR

AUGUST 2018

#### THE ISSUE

What are the obligations for employers in El Salvador based on the “Special Law for the Regulation and Installation of Childcare Centers for Worker’s Children”<sup>1</sup> and how can FLA affiliates ensure compliance with this new legislation?

#### BACKGROUND

Since 1983 the Salvadoran Constitution has recognized the employer’s obligation to provide and maintain childcare centers for workers’ children in the workplace, but acknowledged that secondary legislation was needed to regulate the implementation of this obligation (Article 42). However, over the intervening 34 years, the Salvadoran Congress (*Asamblea Legislativa*) did not pass this needed secondary law which meant employers did not have clarity on how this Constitutional right was supposed to be implemented.

The Central America Committee of the Americas Group, in conjunction with local worker rights’ organizations such as the *Concertación por un Trabajo Digno para las Mujeres (CEDM)*, have consistently advocated for employers to comply with the Constitutional requirement, even absent implementing legislation or regulation. There are three apparel factories in El Salvador that provide some level of childcare on the factory premises.

In 2015, Salvadoran citizens filed a writ of *amparo* (remedy for the protection of constitutional rights) with the Constitutional Chamber of the Supreme Court of Justice based on the omission of the Congress to approve the secondary legislation as required by Article 42 of the Constitution. On November 10, 2017, the Constitutional Chamber ruled that the Congress was unreasonable in its delay in implementing the constitutional mandate to pass a law to regulate the provision and maintenance of nurseries and childcare centers for workers’ children and instructed the Congress to adopt the mandatory regulation before May 31, 2018.

<sup>1</sup> The Special Law on the Regulation and Installation of Childcare Centers was published on June 19, 2018 in the *Diario Oficial* of El Salvador, pages 3-6. See: <http://www.diariooficial.gob.sv/diarios/do-2018/06-junio/19-06-2018.pdf>

#### FLA CODE ELEMENTS

##### Compensation C.1 General Compliance Compensation

Employers shall comply with all national laws, regulations and procedures concerning the payment of compensation to workers.

##### Nondiscrimination ND.1 General Compliance Nondiscrimination

Employers shall comply with all national laws, regulations and procedures concerning nondiscrimination.

On May 31, 2018, the Congress passed the Special Law for the Regulation and Installation of Childcare Centers for worker's children.<sup>2</sup> The new law stipulates the employer's responsibilities when providing nurseries and childcare services for workers' children, either on-site or off-site, the workplace.

The key points of the law are:

- The law is applicable for employers in both the public and private sector. (Article 2)
- A childcare center is defined as an establishment or physical space within or outside the workplace in which workers can feed and leave their children under the supervision and care of a trained professional while he/she is working. (Article 3)
- Workers are eligible to enjoy this benefit from the time maternity leave ends until their child turns 3 years old. (Article 4)
- Only employers with more than 100 employees are obligated to comply with this legal obligation. (Article 5)
- Employers have different options to comply with the law (Article 6)
  - a) Installing and maintaining childcare centers in an annex building or in an independent space within the same geographic area of the workplace;
  - b) Using a common childcare center provided, maintained, and funded by several companies or establishments;
  - c) Contracting an external childcare center.

(In either case, the employer must bear the total cost of the installation and maintenance of the childcare center or pay for external childcare services.)

<sup>2</sup> For reference see the note published by the Salvadoran Congress in their webpage regarding the endorsement of the Special Law for the Regulation and Installation of Childcare Centers for worker's children in the following link: <https://www.asamblea.gob.sv/node/7144>

- No compensation or reimbursement will be provided to workers if they use another childcare center other than that provided by the employer. (Article, 10)
- In case of noncompliance with the law, employers will be sanctioned with a fine equivalent to 5 to 8 times the minimum wage (approximately \$1,500 to \$2,400).<sup>3</sup> (Article 11)

The law will take effect in two years, beginning from June 19, 2018, when the law was published in the *Diario Oficial* of El Salvador. The President of El Salvador must also approve the implementing regulations to the Special Law for the Regulation and Installation of Childcare Centers for worker's children, within the six months after the law takes effect.<sup>4</sup>

### **Special Considerations**

With the approval of the new legislation on childcare, El Salvador took a positive step forward in recognizing working parents' right to receive the necessary support for the care of their children, and to combine family obligations with work responsibilities and social/public life, in accordance with the Salvadoran Constitution and several international Conventions ratified by El Salvador<sup>5</sup>. Nevertheless, civil society organizations have raised some concerns about the implementation of the law:

- Employers are granted exclusive discretion on the mode of delivery of the childcare service that will be provided to workers' children. There is no provision for consultation with workers, and as a consequence, the concern is that the employer could comply with the law, but not actually be providing a childcare environment that the workers need or find useful.

<sup>3</sup> Calculation based on 2018 minimum wage for the commerce and services sector (USD 300.00)

<sup>4</sup> This Issue Brief will be updated once the implementing regulations are published.

<sup>5</sup> Article 11 2 (c), UN Convention on the Elimination of All Forms of Discriminations against Women (CEDAW); Article 7 and 18, UN Convention on the Right of the Child (CRC); and Article, ILO Convention 156 on Workers with Family Responsibilities.

- The law only provides for childcare coverage for children between 3 months until 3 years old. In El Salvador, elementary school starts at age 5, which means there is a two-year gap for child care coverage. This gap will be particularly difficult for maquila workers and others earning only minimum wage.
- The law does not require employers to provide other specific services associated with childcare, such as food, or transportation for the children, something that could be an obstacle for working parents to make use the childcare services that the new law provides.

## FLA RECOMMENDATIONS

The FLA recommends that company affiliates:

- ***Effectively communicate with their suppliers regarding the changes in El Salvador's legal framework on childcare and ensure workers are represented during the development of the company's childcare internal policies and procedures.*** According to FLA Employment Relationship Benchmark 25.2: "Employers shall have a clear and transparent system of worker and management communication that enables workers to consult with and provide input to management." Input from workers is critical to the process of developing a company's plan to install and maintain a childcare center or to select the correct external provider, so companies need to ensure supplier's consult with workers.
- ***Enforce compliance of the Special Law for the Regulation and Installation of Childcare Centers for worker's children among their suppliers in El Salvador.*** Salvadoran employers will have approximately two years to prepare for compliance with the legal obligations established in the new legislation on childcare. During this time, they should

collaborate with workers and unions to identify the model of childcare that will work best in their workplace, and then develop internal policies and procedures to bring the plan to fruition. Once the law comes into force, suppliers will be prepared to provide this legal benefit for workers' children.

- ***Consult with key stakeholders in El Salvador.*** Brands and suppliers should consult with governmental institutions in El Salvador, civil society organizations, trade unions, international agencies, employers that are currently operating a childcare center, and other key actors in the labor sector to gain a better understanding of the process, risks, challenges, and best practices in creating and operating a childcare center.

## RESOURCES

Childcare in Central America: Legal Requirements and International Conventions (May 2018)

<http://www.maquilasolidarity.org/en/childcare-central-america-legal-requirements-and-international-conventions-may-2018>

Tackling Childcare: The Business Case for Employer-Supported Childcare

[https://www.ifc.org/wps/wcm/connect/bd3104e5-5a28-4ee9-8bd4-e914026dd700/01817+WB+Childcare+Report\\_FinalWeb3.pdf?MOD=AJPERES](https://www.ifc.org/wps/wcm/connect/bd3104e5-5a28-4ee9-8bd4-e914026dd700/01817+WB+Childcare+Report_FinalWeb3.pdf?MOD=AJPERES)

Cashing in on Education: Women, Childcare, and Prosperity in Latin America and the Caribbean

- See more at: <https://publications.iadb.org/handle/11319/8255#sthash.wOyQd8kc.dpuf>

TAKING CARE OF BUSINESS: Childcare in Bangalore's Apparel Industry

[http://www.fairlabor.org/sites/default/files/childcare-in-bangalores-apparel-industry\\_0.pdf](http://www.fairlabor.org/sites/default/files/childcare-in-bangalores-apparel-industry_0.pdf)