

UPDATED JUNE 4, 2025¹

Advance Severance Payments to Garment Workers in El Salvador

THE ISSUE

How should Fair Labor Association (FLA) member companies and affiliates correctly implement the practice of providing advance severance payments to garment workers in El Salvador?

BACKGROUND

In El Salvador's garment sector, employers frequently pay workers an additional month's salary per year, labeled as an advance severance payment. Employers are not required by Salvadoran law to provide these payments in advance. However, employers see this practice as a way to reduce the risk of being unable to pay the legally required severance that would normally follow termination without cause. This risk is especially high in cases of mass layoffs or unexpected factory closures.

The country is currently facing disruptions to its apparel industry from low domestic production and reallocation of production to other countries. This has resulted in an increased risk of non-compliance with local labor regulations and FLA's Workplace Code of Conduct, also known as the Fair Labor Code, and Compliance Benchmarks.

According to Article 58 of the Salvadoran Labor Code and Article 38, No. 11 of the Salvadoran Constitution, employers are required to pay severance in accordance of the law to workers that they terminate without cause (indemnización). Workers are entitled to one month's salary for each year of employment. The law does not prohibit advancing severance payments.

The lack of regulation by Salvadoran labor laws on advancing workers' severance payments has allowed employers to implement practices that do not align with FLA standards or national regulations, raising concerns about the practice's effectiveness despite the constructive intent behind these payments.

Workers and unions support these payments because workers view them favorably – they feel like they are receiving an additional month's salary each year. However, because many workers' incomes are insufficient to meet their basic needs, most workers use the advance payment to meet current financial obligations rather than saving the money in case of termination.

Through monitoring labor conditions at factories and investigating allegations from Salvadoran

¹ This is the third update to the original issue brief, published in August 2023.

unions of persistent and systemic labor violations, FLA has identified cases of non-compliance with national regulations and FLA’s Workplace Code of Conduct and Compliance Benchmarks in connection with advance severance payments.

Three key issues are:

1. Incorrect final severance payouts

In multiple Sustainable Compliance Initiative (SCI) assessments at suppliers in El Salvador, FLA has documented inaccurate calculations and payments of workers’ severance benefits when an employer decides to unilaterally terminate workers without cause. Often, factories use a common calculation method that reduces the total amount of termination payouts workers are legally entitled to receive.²

Many employers believe that they are not required to reassess their severance policies because the calculation method complies with local regulations. However, the method does not in fact comply with the national Salvadoran Labor Code, or the formula suggested by FLA.

The chart below demonstrates the wages an employer can owe a worker when using this incorrect method. This data was taken from an FLA Third Party Complaint (TPC) closed in 2025 in which the core allegation was the inaccurate calculation of workers termination payouts after a massive layoff and factory closure.³

Table 1: Example of the wages an employer owes a worker⁴

Worker	Date of hire	Salary at the time of termination (USD)	Years of seniority	Date of last severance payment received	Calculation based on Art. 48 of labor code	Payment of advance severance accumulated	Difference
Worker 1	4/16/2009	\$391.77	14.60	11/17/2023	\$5,719.84	\$5,044.94	\$674.90
Worker 2	3/9/2010	\$369.87	13.70	11/17/2023	\$5,068.74	\$4,270.27	\$798.47
Worker 3	5/25/2015	\$372.30	8.49	11/17/2023	\$3,160.98	\$2,823.74	\$337.24

2. Unlawful agreements to avoid paying full severance

According to the Salvadoran Constitution and Labor Code, workers cannot waive their labor rights.⁵ Therefore, any negotiation or settlement between an employer and workers that reduces the final amount of a worker’s legally entitled severance contravenes the law. However, unlawful

² Often, factories determine severance calculations based on multiplying a) the years or fractions of a year counted since the last time the factory advanced the severance payment to the worker until the date of his/her dismissal, times; and b) the contracted basic salary at the time of the termination; FLA recommends calculating the final severance payment of termination payouts by multiplying the total length of service for the last valid legal minimum wage in force and deduct from the total all in-advance payments of termination payouts provided to the workers in previous years.

³ [2024 El Salvador Sew Third Party Investigation report](#)

⁴ More examples are disclosed on page 17 and 18 of the 2024 El Salvador Sew Third Party Investigation report.

⁵ El Salvador Constitution articles 38 (section 11) and 52; Labor Code article 58.

settlements can still be found at certain factories and suppliers.

As an example, in 2018 a local union filed a TPC alleging labor violations at a supplier to certain FLA companies.⁶ Part of the TPC alleged that the factory had an agreement with two other unions that workers who wanted to receive an advance severance payment annually could do so by agreeing to be paid 70% of their total severance amount and forfeiting the remaining 30%. When these workers were later dismissed, no additional severance was paid by the factory. The 2018 TPC confirmed these allegations, and a follow-up assessment in 2019 found the practice was still occurring.⁷

In 2024, this factory started using the correct calculation for workers' severance following FLA's standards due to the engagement and leadership of a manufacturing company. This commitment has improved working conditions within the factory and is promoting ethical labor practices across the industry.

3. Opaque documentation and inequitable criteria

Lawyers for many employers in El Salvador have recommended documenting workers' advance severance payments as a termination of the employment relationship, to protect the employer from a potential legal violation. Under this structure, workers must sign a settlement letter every time they receive the advance payment, stating the employment relationship has ended – even though workers are not terminated and continue working at the factory. Therefore, some factories renew the employment contracts for their entire labor force year after year.

This practice is disadvantageous for any worker who may be subject to discrimination or other potential violations to his or her labor rights. In addition, employers may exclude those entitled to special protection under the law (e.g., union officials, pregnant and lactating workers, or workers with chronic medical conditions) from receiving advance severance payments, because they cannot be dismissed without previous authorization from a labor authority; the affected workers and their union organizations believe this is discriminatory.

FLA's benchmarks for manufacturing state that "where employers provide annual indemnification, original contracts should remain without being terminated." Therefore, any document signed by the employee should only record the advance payment received, and the original employment should not be terminated every instance they receive an advance severance payment.

LEGAL CLARIFICATION

Historically, the lack of clear legal regulation or guidance has kept Salvadoran employers from making changes to their advance severance payment practices. However, in 2019, the Ministerio de Trabajo y Previsión Social (the Ministry of Labor and Social Welfare), or MINTRAB, released updated guidance.

⁶ The TPC was filed by the Sindicato de la Industria Textil, Similares y Conexos de El Salvador (the Union of the Textile, Similar and Related Industries of El Salvador), or SITSCES.

⁷ See full SCI assessment [here](#).

In 2019, an FLA Participating Company sought clarification from MINTRAB on the correct calculation of workers' final severance payout when they received advance severance payouts and then were terminated without cause.⁸ MINTRAB noted that any advance payments cannot be legally considered severance, but these payments should be calculated based on the last salary earned by the worker.

In the same year, a union federation asked MINTRAB for its legal opinion on whether a special category of workers should be entitled to receive their severance payment in advance, as was the practice at one factory in El Salvador.⁹ MINTRAB stated that any advance payment aiming to maintain job stability of workers with a special legal protection could be considered a good practice; not paying this benefit to these workers could be considered a biased decision if the factory voluntarily pays this benefit to the rest of the workforce.

FLA RECOMMENDATIONS FOR COMPANIES IN EL SALVADOR

With the knowledge that advance severance payments are a common practice in El Salvador, companies sourcing from the country should work with their suppliers to ensure that the issues outlined in this brief are avoided, and all legal regulations and FLA standards are followed.

FLA recommends that:

1. Companies ensure correct calculation of workers' severance payments.

Companies should work with their suppliers to review the calculation criteria for advance severance payments and ensure the final severance payment, at the time of termination, is calculated in compliance with Article 58 of the Salvadoran Labor Code. The total amount the employer has already advanced should be deducted from that sum, in compliance with FLA standards concerning termination and retrenchment.

2. Companies prevent the use of unlawful agreements used to avoid paying full severance.

When there is a supplier policy or settlement between employers and workers that limits workers' rights, it must be ended immediately and FLA companies and their suppliers should ensure all workers are being paid full severance when they are terminated without cause, even if a worker has "voluntarily" signed an agreement renouncing full compensation.

3. Companies prevent the use of opaque documentation and inequitable criteria.

Companies should ensure that suppliers manage advance severance payouts as an advance of their labor liabilities and not as a termination. It should be voluntary for workers to accept these payouts; it is critical workers are aware of this and can decide whether to accept the advance payments without fear of retaliation.

⁸ The legal opinion is attached as an Appendix to this issue brief.

⁹ Federación de Asociaciones y Sindicatos Independientes de El Salvador (the Federation of Independent Associations and Unions of El Salvador), or FEASIES, launched this inquiry with MINTRAB.

FLA recommends the following:

- When implementing advance severance payments results from a bargaining process or collective agreement or settlement with workers' representatives, the advance payments should never limit workers' legal rights.
- Advance payment should be made on a nondiscriminatory basis, and non-payment should not be used as a disciplinary measure.

4. Companies follow Salvadoran labor regulations and FLA standards.

Companies sourcing from El Salvador should prioritize auditing their suppliers' policies and procedures governing termination, compensation, and retrenchment ensuring those are in alignment with the Fair Labor Code and Compliance Benchmarks and MINTRAB's legal opinions. In the case of multiple companies sourcing from the same factory, the correct implementation of FLA's recommendation regarding this issue should be a coordinated and joint effort.

All FLA members must remain committed to the higher standards when there is conflict between the Fair Labor Code and Compliance Benchmarks and local laws.

5. Companies support their Salvadoran suppliers in ensuring clear communication and training regarding advance severance payments.

This process should involve consultation with workers' representatives.

APPENDIX 1: FLA CODE ELEMENTS

EMPLOYMENT RELATIONSHIP BENCHMARKS

ER.15.3 Employers shall not demand that workers sign any declaration of good health, waivers or releases of other rights as a condition of receiving severance pay or other legal benefits* from the company, and shall not threaten to withhold benefits if workers do not sign.

ER.15.4 Upon termination, severance shall be based upon the worker's current salary and seniority as calculated from the initial date of hire.

ER.15.4.1 Where employers provide advance termination payouts as allowed by law, these amounts may be subtracted from the final severance payment but must be included as itemized deductions in the final severance calculation.

ER.15.5 Where employers provide annual indemnization, original contracts should remain without being terminated.

COMPENSATION BENCHMARKS

C.11.1 Employers shall comply with all national laws, regulations and procedures concerning the payment of compensation to workers.

C.1.2 In any case where differences or conflicts in national law and FLA Workplace Code arise, employers are expected to apply the highest standard.

APPENDIX 2: MINTRAB'S LEGAL OPINION ON THE CALCULATION OF SEVERANCE PAYOUTS AT THE TIME OF A TERMINATION WITHOUT JUST CAUSE



Ref: DGT-HC-006-EXT-2019
San Salvador, December 16, 2019

In response to your letter received on October twenty-nine of the present year, in which you submit a request to issue an opinion regarding the severance payment a person working at an institution should receive at the time of their termination without just cause. Two questions arise, detailed and addressed below:

1. Should the calculation of the severance payment be made on the basis of the salary that the employee is earning at the time of the unjustified dismissal?

As established in the Constitution of El Salvador in Article thirty-eight, *“Labor shall be regulated by a Code whose main purpose will be to harmonize relations between employers and workers, establishing their rights and obligations. It shall be based on general principles aimed at improving the living conditions of workers, and shall include in particular the following rights...”* Section eleven *“An employer who dismisses an employee without just cause is legally bound to compensate him/her in accordance with the law.”* Therefore, it can be determined that this is a right based on the Constitution of the Republic; accordingly, Article fifty-eight of the Labor Code establishes the following *“When a worker hired for an indefinite term is dismissed from a job without just cause, the worker shall have the right to be compensated by the employer with an amount equivalent to the basic salary of thirty days for each year of service and proportionally for fractions of a year. In no case shall the severance payout be less than the equivalent to a basic salary of fifteen days.”* For the purpose of severance payment, the last salary earned by the employee on the date on which the dismissal took place is applied.

2. In case an employer has paid severance in the years prior to the unjustified dismissal and there has been an increase to the worker's salary, should the employer pay the severance supplement for those years on the basis that at the time of termination, the employee was earning a salary greater than that earned in the years for which the severance was advanced?

Based on your inquiry, the Labor Code does not refer to advance payment of severance since it only recognizes the payment of severance at the time when the employee has been dismissed without just cause. Therefore, the amount paid in advance is a benefit provided to the worker in reference to the payment of labor liabilities, but not in reference to severance, since it applies only in the case of an unjustified dismissal as set forth in Article fifty-eight of the Labor Code. However, Article six of the Law Regulating the Economic Benefit for Voluntary Resignations

addresses the payment of a yearly benefit, but the supplement only applies in cases in which the legally applicable benefit has not been paid.

Without anything further at present.
Sincerely,

[Signature] [Stamp]
Emigdia Mayari Merino Garcia
Labor General Director

NOTE: The present is a non-binding illustrative opinion based on the information provided in the request and is in no way intended to resolve any particular case, but rather to provide an illustration for a better application of labor standards.

ABOUT FAIR LABOR ASSOCIATION

Fair Labor Association (FLA) promotes human rights at work. We are an international network of companies, universities, and civil society organizations collaborating to ensure that millions of people working at the world's factories and farms are paid fairly and protected from risks to their health, safety, and well-being.