

**Appendix to The Law of Hotel
Housekeeper Occupational
Health & Safety:
Country Reports**

The Transnational Development Clinic at Yale Law School

Prepared for UNITE HERE

February 25, 2014

Table of Contents

Argentina	1
India.....	30
Indonesia.....	46

Argentina

1. Industry Overview

Argentina's hotel industry is poised to benefit from an expanding clientele as tourism grows rapidly in the country during the years ahead.¹ Hoping to capitalize on this opportunity, the Argentine government has launched aggressive strategic campaigns promoting tourism through 2020.² Meanwhile, tourism from abroad constituted 1.0% of GDP and 4.9% of exports as of 2012. Approximately 5.6 million foreign tourists visited Argentina that year, with Brazil, Chile, Europe, Uruguay, and Paraguay sending the most.³ Buenos Aires, Rosario, the Central Region, the Atlantic Coast, and Salta, Tucumán & Jujuy led in overnights stayed by tourists.⁴

Although the availability of disaggregated GDP data is limited, the Ministry of Tourism estimates that hotels, bars, and restaurants together contributed 2.4% of GDP in 2012.⁵ High inflation and an uncompetitive exchange rate contributed to a slower 1.6% growth rate across these industries in 2012, but in 2011 they grew overall at a robust 7.7%.⁶

¹ *Benchmarking Travel & Tourism in Argentina*, World Travel & Tourism Council (April 2012), http://www.wttc.org/site_media/uploads/downloads/WTTTC_Sectors_-_Argentina.pdf (This report forecasts a 4% travel and tourism industry growth rate through 2022 as compared to a 3% overall growth rate); *Economic transformation drives Latin America's lodging industry*, Jones Lang LaSalle (September 2013), http://www.joneslanglasalle.com/ResearchLevel1/JLL-Latin-America_White-Paper_Sep2013.pdf (This report profiles the hotel sector specifically in other countries but discusses the region more broadly).

² *PLAN FEDERAL ESTRATEGICO DE TURISMO SUSTENTABLE*, Ministerio de Turismo (2011), <http://www.repotur.gov.ar/bitstream/handle/123456789/121/pfets2020.pdf?sequence=1>.

³ *Anuario Estadístico de Turismo*, Ministerio de Turismo (2012), Chart 6.1, Chart 2.1.1, and Graphic 2.1.2, <http://siet.desarrolloturistico.gov.ar/documentos/descarga/342/0112ddb5f20250393abe93cbe13c82a2553950c.pdf>.

⁴ This count is among tourists who arrived at the main Ezeiza, Jorge Newbery, or Córdoba airports or the port of Buenos Aires. See *Encuesta de Turismo Internacional*, Ministerio de Turismo (Feb. 5, 2013), Chart 10, available at <http://siet.desarrolloturistico.gov.ar/documentos/descarga/286/8db8d5dce579460a54f418813131ea435b27e01d.pdf>.

⁵ *Anuario Estadístico de Turismo*, *supra*, Chart 6.1.

⁶ *Id.*; Ian Mount, *Tourism in Argentina: feeling the squeeze*, Financial Times (July 12, 2012), <http://blogs.ft.com/beyond-brics/2012/07/12/tourism-in-argentina-feeling-the-squeeze/>.

The largest hotel chain in Argentina by market share is Starwood at 5% with 10 properties, followed by NH Hoteles with 13 properties, Howard Johnson with 32 properties, Accor with 8 properties, and Hilton with 2 properties. Hyatt has two properties, and Marriott has one.⁷

The Hotel Occupancy Survey is run by Argentina's National Institute of Statistics and Censuses jointly with the Ministry of Tourism to better understand the effects of domestic and international tourism on the hospitality industry.⁸ The table that follows presents the Survey's March 2013 estimates of the geographic distribution of the hotel industry across Argentina's regions based on 45 localities.⁹

⁷ *Travel Accommodation in Argentina: About this Report*, Euromonitor International (Oct. 2013), <http://www.euromonitor.com/travel-accommodation-in-argentina/report>; website hotel finders.

⁸ *Encuesta de Ocupación Hotelera 2013 (EOH)*, Ministerio de Economía y Finanzas Públicas (n.d.), <http://www.indec.mecon.ar/encampo/hoteles.asp>.

⁹ *Encuesta de Ocupación Hotelera*, Ministerio de Turismo (May 21, 2013), available at <http://siet.desarrolloturistico.gov.ar/documentos/descarga/315/1e40c8289b21d3747b4800316816f7c8a520c088.pdf>; *Encuesta de Ocupación Hotelera*, Ministerio de Economía y Finanzas Públicas (n.d.), http://www.indec.mecon.ar/principal.asp?id_tema=5165. The Ministry of Tourism has previously cited different data, perhaps with wider coverage; for example, in 2009, it counted 5,107 hotels and 7,120 para-hotels as compared to the Survey's 2,932 hotels and 3,366 para-hotels that year. See *OFERTA DE ALOJAMIENTO EN LA ARGENTINA AÑO 2009*, Ministerio de Turismo (2010), available at <http://siet.desarrolloturistico.gov.ar/documentos/descarga/65/7dbc0de5d9370da096c0dc0a18d07b0f26d0a317.pdf>.

Region/Unit	Hotels	Para-hotels ¹⁰	Hotel rooms ¹¹	Para-hotel rooms ¹²	Guests
North	352	435	336,040	146,713	193,412
Cuyo	402	281	420,218	69,233	187,678
Patagonia	489	779	497,557	192,401	274,714
Greater Buenos Aires	665	519	622,402	292,501	216,292
Coastal	319	305	435,519	126,294	246,884
Central	445	598	395,428	194,215	180,592
Autonomous City of Buenos Aires	427	259	812,200	128,712	395,056
Total	3,099	3,176	3,519,364	1,150,069	1,694,628

See citation.¹⁴

The image shows a map of Argentina divided into six regions, each with a logo and a list of provinces:

- Buenos Aires** (destino buenos aires): Jujuy, Salta, Tucumán, Catamarca, Santiago del Estero, Corrientes, Entre Ríos, Santa Fe, Misiones, Chaco, Formosa.
- Centro** (Córdoba): Córdoba.
- Litoral** (Litoral): Santa Fe, Entre Ríos, Corrientes, Misiones, Chaco, Formosa.
- Norte** (NORTE ARGENTINO): Jujuy, Salta, Tucumán, Santiago del Estero, Catamarca.
- Cuyo** (CUYO ARGENTINA): La Rioja, San Luis, San Juan, Mendoza.
- Patagonia** (Patagonia): La Pampa, Neuquén, Río Negro, Chubut, Santa Cruz, Tierra del Fuego.

A legend on the right side of the map identifies the regions by color: Región Patagonia (blue), Región Cuyo (green), Región Centro (yellow), Región Ciudad de Buenos Aires (orange), Región Litoral (red), and Región Norte (purple).

No information was found on the demographics of hotel housekeepers in Argentina. The country's OSH agency, the Superintendency of Work Risks, has profiled the occupational hazards facing several disadvantaged subgroups, including domestic workers and informal and

¹⁰ Fn. 1 in each of the region data files defines para-hotels as “union hotels, lodges, cabins, bungalows, lodges, bed & breakfasts, hostels, residences, etc.” beyond starred hotels and apartment hotels, which are classified simply as hotels. *Encuesta de Ocupación Hotelera*, Ministerio de Economía y Finanzas Públicas (n.d.), http://www.indec.mecon.ar/principal.asp?id_tema=5165.

¹¹ Fn. 2 in each of the region data files notes that “rooms” counts those available in a wider class of lodgings than just hotels and para-hotels, including hostels, homesteads, cabins, bungalows, and others. *Id.*

¹² See fn. 10.

¹³ See fn. 11.

¹⁴ *República Argentina*, Argentina Por Descubrir (2011), <http://argentina.pordescribir.com/sobre-argentina>.

migrant workers in construction, agriculture, and several other industries, but not hotel workers.¹⁵

Empirical data on housekeeper occupational injuries and illnesses in Argentina is also thin. The Superintendency of Work Risks has released data, although it is aggregated to the level of “Trade, Restaurants, and Hotels.” The most common injuries were bruises (34.0%), wounds derived from cuts (14.4%), internal injuries (11.4%), and strains (8.5%).¹⁶ As a point of comparison, Buchanan, et al. (2010) categorized housekeeper injuries from 71 U.S. hotels operated by the five largest U.S.-based hotel companies during 2003-2005 as 49.73% acute trauma injuries, 40.13% musculoskeletal disorders, and 10.14% other injuries.¹⁷ The Argentine data encompasses other types of workers beyond just housekeepers. But with the most common Argentine injuries often accompanying or exacerbating acute or musculoskeletal trauma, the Argentine injury breakdown does echo that from the Buchanan study in the U.S.

2. Public Law

The Argentine government website InfoLEG catalogues the text of laws, resolutions, decrees, and other legal instruments.¹⁸ In this section, a note on the topic of a legal instrument is added where the title is absent or uninformative.

¹⁵ Marta Panaia, *ACCIDENTES DE TRABAJADORES INFORMALES Y MIGRANTES SIN PAPELES*, Superintendencia de Riesgos del Trabajo (2007), available at http://biblioteca.srt.gob.ar/Publicaciones/2007/Trabajadores_informales_migrantes.pdf; *INFORME ESPECIAL SOBRE LOS TRABAJADORES DEL SERVICIO DOMÉSTICO*, Superintendencia de Riesgos del Trabajo (Nov. 2008), available at http://www.srt.gob.ar/estadisticas/informes/2008/2008_Domestico.pdf.

¹⁶ *AÑO 2011 - COMERCIO, RESTAURANTES Y HOTELES - CASOS NOTIFICADOS*, Superintendencia de Riesgos del Trabajo (n.d.), http://www.srt.gob.ar/estadisticas/sector/06_com/2011/2011si/INDEX.HTM.

¹⁷ Susan Buchanan, et al., *Occupational injury disparities in the US hotel industry*, 53 Am. J. Ind. Med. 116 (2010), available at <http://onlinelibrary.wiley.com/doi/10.1002/ajim.20724/abstract>.

¹⁸ *InfoLEG*, Ministerio de Economía y Finanzas Públicas (n.d.), <http://www.infoleg.gob.ar/>. Regular decrees (as distinct from Necessity and Urgency Decrees for emergencies, none of which are cited in this report) are issued by the President in accordance with powers that are inherent or delegated by a law. Resolutions are issued by the government ministries, agencies, or Office of the President in accordance with their respective powers. In the context of OSH, both types of legal instruments are usually issued to elaborate on the details and implementation of laws. See *Law No. 26122*, Ministerio de Economía y Finanzas Públicas (n.d.),

(A) Constitution

a) National

Argentina's Constitution, last amended in 1994, guarantees inhabitants the right to "work and perform any lawful industry" according to regulations (article 14). Article 14a provides that:

Labor in its several forms shall be protected by law, which shall ensure to workers: dignified and equitable working conditions; limited working hours; paid rest and vacations; fair remuneration; minimum vital and adjustable wage; equal pay for equal work; participation in the profits of enterprises, with control of production and collaboration in the management; protection against arbitrary dismissal; stability of the civil servant; free and democratic labor union organizations recognized by the mere registration in a special record. Trade unions are hereby guaranteed: the right to enter into collective labor bargains; to resort to conciliation and arbitration; the right to strike. Union representatives shall have the guarantees necessary for carrying out their union tasks and those related to the stability of their employment... The State shall grant the benefits of social security, which shall be of an integral nature and may not be waived. In particular, the laws shall establish: compulsory social ...insurance, which shall be in charge of national or provincial entities with financial and economic autonomy, administered by the interested parties with State participation, with no overlapping of contributions; adjustable retirements and pensions; full family protection; protection of homestead; family allowances and access to a worthy housing.¹⁹ [emphasis added]

Because the text of the Article says that "law" is to guarantee these rights, these provisions have been treated as not self-executing. Some (e.g., worker participation in profits and management) have not been implemented.²⁰

<http://www.infoleg.gob.ar/infolegInternet/anexos/115000-119999/118261/norma.htm>; *Manual de procedimiento*, Ministerio de Trabajo, Empleo y Seguridad Social (n.d.), Chapter 2, <http://www.trabajo.gov.ar/downloads/manualProcedimientos/titulo-preliminar-capII.pdf>. Some standards listed both an "updated text" and a "full text" and some just a "full text." For standards without an "updated text," the "full text" has been presumed unamended. Critical phrases from the legal text are sometimes recited directly in this section. The legal overviews are based on translations from Spanish that have not yet been double-checked, so they should not be relied upon for anything other than guidance about which legal texts to consult directly.

¹⁹ CONSTITUCIÓN ARGENTINA [Constitution] (Arg.), available at http://www.wipo.int/wipolex/en/text.jsp?file_id=282508.

²⁰ Arturo Bronstein, *National Labour Law Profile: Republic of Argentina*, International Labour Organization (n.d.), http://www.ilo.org/ifpdial/information-resources/national-labour-law-profiles/WCMS_158890/lang--en/index.htm.

Article 31 declares “treaties with foreign powers,” along with the Constitution and “the laws of the Nation enacted by Congress in pursuance thereof,” to be supreme law binding the provinces except for the Province of Buenos Aires for treaties ratified after the Pact of November 11, 1859. Article 75, paragraph 22 similarly declares “[t]reaties and concordats” to have a higher hierarchical position than laws and lists a number of international instruments specifically, including the Universal Declaration of Human Rights, International Covenant on Economic, Social, and Cultural Rights, International Covenant on Civil and Political Rights, and Convention to Eliminate All Forms of Discrimination Against Women, as having “constitutional hierarchy.”²¹

b) State/Provincial

The Constitution of Buenos Aires Province echoes many of the principles expressed in the national constitution, including workers’ right to “decent” working conditions. Notably, article 39 also mandates that the state monitor employer compliance with its obligations, establish specialized courts to resolve disputes, apply governance principles of social justice, progressivity, indemnity, and interpretation in favor of the worker, and guarantee workers’ rights of free association, collective bargaining, and striking. Article 27 circumscribes the freedom to engage in work, industry and trade through a proviso that such activity not harm public health. Article 36(4) provides women protection from discrimination, special protection during pregnancy and lactation, and a guarantee of appropriate working conditions. Article 36(5) entitles the disabled to rehabilitation. Article 36(8) guarantees citizens a right to preventive health and rehabilitation, a right to health for the purposes of safety, and more. Article 36(9) guarantees indigenous peoples respect for their ethnic identities. Article 38 entitles consumers to

²¹ CONSTITUCIÓN ARGENTINA [Constitution] (Arg.).

adequate information and to promote their interests around risks to health and safety, and it would be an interesting agency question whether employees would be considered consumers of intermediate goods provided by their employers for carrying out their work duties.²²

(B) National Statutes, Regulations, and Policy

General Labor

Law No. 20744 (Labor Contract): This is the general law governing the form and legal presumptions of the individual labor contract. The interpretation of this law and any individual contract most favorable to the worker shall prevail (article 9). If interpretation cannot settle an issue, social justice and equity principles prevail (article 11). Discrimination by race, nationality, and other demographic categories is prohibited (article 17).

Law No. 23551 (Unions): This is the general law governing unions. Freedom of association shall be guaranteed by all rules relating to union activity (article 1).

Decree No. 1135/2004 (Collective Agreements): This decree governs the negotiation and approval of collective bargaining agreements.

Law No. 25212 (Ratification of the Federal Labor Pact): This law establishes, among other bodies and programs, the Federal Labor Council to coordinate among provincial and national labor administrations as well as liaise with international organizations (Annex I). It lays out the tiers of labor infractions and the associated fines and penalties (Annex II, articles 2-5). The overseeing administrative authority may temporarily shut down an establishment (Annex II, article 5). The powers of inspectors are enumerated (Annex II, article 7). A National Plan for Improving the Quality of Employment will seek to detect unregistered workers, support provincial inspectors, and propose regulations to advance its objectives (Annex III). Plans to

²² CONSTITUCIÓN DE LA PROVINCIA DE BUENOS AIRES [Constitution] (Arg.), <http://www.gob.gba.gov.ar/legislacion/constitucion/cpppal.htm>.

support equality at work for women (Annex V) and inclusion at work of the disabled (Annex VI) are also created.

Law No. 18695 (note: Labor infraction sanctions procedure): This law outlines the investigative and judicial procedures for applying sanctions for labor law infractions.

Decree No. 1183/1996 (note: Unions may cooperate in detecting unregistered work): Under this decree, authorized unions may propose names of people to be designated Labor Controllers (article 2). If approved by the Ministry of Labor, Employment, and Social Security, controlled companies are obligated to provide Controllers with the information necessary to identify unregistered work, and the companies' labor and social security compliance officers are obligated to cooperate with Controllers (articles 3 and 4).

Law No. 25877 (Labor Laws and Provisions): This law amends various other labor laws. Chapter IV requires employers with more than 300 workers to report accident and illness statistics, among other information, to the recognized union. The supervising government agency, the Superintendency of Work Risks, has only released data covering housekeeper accidents and illnesses at the aggregate level of "Trade, Restaurants, and Hotels."²³ The national labor inspectorate is to conclude agreements with local authorities and supplement their inspections in areas with high noncompliance. Inspectors are afforded various powers, including those of inspection without notice or warrant, conduct of evidentiary proceedings, and suspension of tasks involving an "imminent and serious risk" to worker health and safety. The national Integral System of Labor Inspection and Social Security is to monitor, coordinate, and supplement inspections by provincial and Autonomous City of Buenos Aires authorities (title III).

²³ AÑO 2011 - COMERCIO, RESTAURANTES Y HOTELES - CASOS NOTIFICADOS, Superintendencia de Riesgos del Trabajo (n.d.), http://www.srt.gob.ar/estadisticas/sector/06_com/2011/2011si/INDEX.HTM.

General OSH

Law No. 19587 (Health and Safety at Work): This law provides the national executive power with the authority to issue regulations necessary to implement the law (article 11). The executive approves regulations written by the Superintendency of Work Risks in practice (see Decree No. 1057/2003). Objectives outlined in the law include protection of psychological as well as physical health (article 4(a)), incorporation of international standards (article 5(n)), hygiene with respect to chemical agents (article 6(c)), and maintenance of working tools in good condition (article 9(b)). Employers should provide workers pre-occupational medical examinations and periodic checkups and keep health records (article 9(a)).

Decree No. 1338/1996 (note: “Medical Services and Health and Safety at Work”): This decree mandates that, based on employment levels and activity risks, establishments retain certain occupational medicine and OSH services to prevent harm to the health and safety of workers. This may include retaining doctors, OSH professionals, or OSH technicians to work on site a certain number of hours per week or month. However, Article 14 provides some exclusions under which hotels may fall. For example, commercial or service establishments with up to 100 workers that don't deal with work products dangerous to the worker are excluded. Note that, *inter alios*, private sector employers must obtain insurance covering workers' compensation from an insurance provider (“Work Risk Insurer”) for their establishments unless they qualify to self-insure (Law No. 24557, articles 2, 3, and 27). This decree imposes training requirements on occupational risk prevention officers at these Work Risk Insurers as well and permits contracting of occupational health services provision to one's insurer (article 11).

Resolution No. 37/2010 (note: Health examinations at work): Under this resolution, at certain stages in the employment relationship, the Work Risk Insurer or the employer either directly or through the insurer should provide medical examinations of employees. These stages include prior to hiring, periodically, prior to a change in position, optionally after a prolonged absence, and optionally prior to termination (article 1). The employer must tell the Work Risk Insurer which employees were exposed to certain risk agents (article 3).

Law No. 11544 (Work Day): This is the general law governing working hours. Beyond some exceptions inapplicable to housekeepers, maximum working hours are eight hours per day or forty-eight hours per week. For unsanitary environments where toxic fumes or dusts endanger worker health, maximum working hours are six hours per day or thirty-six weekly. If regulations by the executive branch modify these maximum hours for a particular industry or region, pay for all additional hours must be at least 50% higher and 100% higher on holidays.

Decree No. 658/1996 (“Approval of the List of Occupational Diseases...”): This decree lists occupational diseases, including repetitive motion injuries, and “professional activities that can generate exposure.”

Decree No. 617/1997 (note: “Health and Safety Regulations” for the Agriculture Industry): Under this decree, in the agriculture industry, unaided “manual handling” must be replaced with the use of aiding tools “[w]here the working conditions so permit” (article 24(a)). Workers may carry only up to fifty kilograms up to ten meters without the use of aiding tools (article 24(b)). Work Risk Insurers must notify employers of the protective equipment needed given the work hazards present, the use of which by employees is then required (article 48). If such provisions were applied to housekeeping, they might advance housekeeper OSH as well.

Decree No. 911/1996 (note: Health and Safety “Regulations for the Construction [I]ndustry”): Under this decree, in the construction industry, “materials, tools, waste, etc.” must be kept tidy “so as not to obstruct the workplace and passage” (article 46). This might be read as a standard for range of motion or lack of obstruction that could be relevant to housekeeping. The head of the Health and Safety staff (see articles 17-19 and Law No. 19587) must determine the protective equipment needed according to the tasks carried out and associated hazards, the use of which by employees is then required (articles 99 and 101). According to the task, gear may need to be provided to protect the upper and lower limbs (articles 110 and 111).

Resolution No. 295/2003 (note: Technical standards): This resolution covers all establishments to which Law No. 19587 applies, including hotels. It provides guidelines on threshold limit values for exposure to risks related to ergonomics and manual lifting (Annex I), chemicals (Annex IV), and more. The chemicals threshold limit values are maximum allowable concentrations of certain specified substances in the air. As to ergonomics, the resolution defines a threshold limit value for peak force on the hands that varies according to a given task’s Level of Manual Activity index of the rapidity and frequency of hand motion involved. This value is denominated as a percentage of the reference force for the working population of the individual worker (by age, gender, activity, etc.) as determined by laboratory studies.²⁴ Peak force can be assessed either subjectively using the Borg Scale or objectively taking approaches such as measurement with a strain gauge, electromyography, or biomechanical methods. An “action limit” less than the threshold limit value is also defined above which general measures such as monitoring of workers should be undertaken.

²⁴ *RESOLUCION MTESS No 295/03 Anexo I*, RiesgoLab (n.d.), <http://www.riesgolab.com/site/images/stories/pdf/La%20Resoluci%C3%B3n%20295-03%20y%20la%20historia%20de%20la%20Ergonomia%20en%20Argentina%20-%20Riesgolab.pdf>.

The resolution also defines a threshold limit value for weight lifted that ranges from 0 to 32 kilograms and varies according to the number of hours per day lifting, the number of lifts per hour, the height of the lifting relative to one's body, and the distance of the object being lifted from the point between one's ankles.

Control strategies should be undertaken to keep peak force on the hands and weights lifted below threshold limit values. Strategies discussed include permitting breaks hourly if not more frequently, "rotat[ing]" workers through activities involving "high... demands" over the course of the workday, and employing tools that "reduce the requirement of force," allow for better "time management," and "improve posture" (Annex I).

Although individual instances of threshold limit values being exceeded during the course of workplace activity are likely difficult to verify in practice, employer compliance with the resolution's detection and mitigation provisions is more easily observed. Employers are instructed to assess jobs believed to possibly involve musculoskeletal risks, monitor workers' musculoskeletal injuries and health upon identification of an existing risk, and implement control strategies upon detection of tasks exceeding threshold limit values. While this resolution's ergonomics provisions are highly procedural and the associated threshold limit values context-specific, the resolution does define concrete employer obligations. Implementation of an Integrated Ergonomics Program of detection and mitigation is mandatory, and compliance is being enforced through inspections and fines.²⁵

²⁵ *Control strategies were implemented on PEI*, Sindicato de Informáticos y Afines de Río Negro y Neuquén (Feb. 21, 2013), <http://www.siarne.org.ar/2013/02/21/se-implementaran-estrategias-de-control-sobre-el-p-e-i/>.

*Decree No. 351/1979*²⁶ (note: *Work environment standards*): This decree mandates that establishments in covered industries²⁷ comply with its various work environment specifications regarding temperature, drinking water, first aid, restrooms, and precautions against fires.

Minimum required lighting levels are set by task, as are ventilation levels per person. Threshold limit values are established for air contaminants, noise, vibration, and radiation.

Resolution No. 444/1991 (note: “*Environmental Pollution*”): This resolution provides maximum allowable concentrations of chemical contaminants, carcinogens, nuisance particles like dust, and more.

Resolution No. 1528/2012 (note: “*Approval of the Protocol for the Treatment of Traumatic Injuries of the Upper Limbs*”): This resolution provides a protocol for the timeline of diagnosis and treatment of work-related injuries to the upper limbs covered through the workers’ compensation system.

Resolution No. 761/2013 (note: “*Approval of the Protocol for the Treatment of Traumatic Injuries of the Lower Limbs*”): This resolution is analogous to Resolution No. 1528/2012 above but for work-related injuries to the lower limbs.

Resolution No. 696/2013 (note: *Treatment of traumatic spinal injuries*): This resolution is analogous to Resolution No. 1528/2012 above but for work-related injuries to the spine.

Resolution No. 762/2013 (note: “*Approval of the Protocol on Medical Care in Psychiatry*”): This resolution is analogous to Resolution No. 1528/2012 above but for work-related psychiatric disorders. Conditions discussed include traumatic stress caused by a threat to

²⁶ See Law 19587 and Decree 351-79, Ministerio de Educación (n.d.), http://www.me.gov.ar/spu/guia_tematica/infraestructura_u/doc/Decreto_351.pdf.

²⁷ Industries totally or partially exempted from Decree No. 351/1979 and regulated by other Decrees include construction, agriculture, and mining. See Decrees No. 911/1996, 617/1997, and 249/2007. No exemption from Decree No. 351/1979 was found for the hotel industry. Decree No. 351/1979, Ministerio de Economía y Finanzas Públicas (n.d.), <http://www.infoleg.gob.ar/infolegInternet/anexos/30000-34999/32030/teexact.htm>.

the worker's life or integrity (which arguably encompasses bullying and harassment) and mental disorders caused by toxic exposure.

Workers' Compensation

Law No. 24557 (note: Workers' compensation): This is the general law governing the workers' compensation system. Government employees, private sector employees, and “[p]ersons required to provide a public charge service” are included in the law’s scope, and the executive branch may elect to also include domestic workers, the self-employed, and others (article 2). Employers of such employees are included in the law’s scope, and they must obtain Work Risk Insurance unless they qualify to self-insure by being economically and financially solvent in order to provide the health care benefits under the law as well as the services to confer such benefits and benefits in kind under article 20 (articles 3 and 27). Employers must take steps to mitigate occupational risks, and Work Risk Insurers must prepare an action plan, the requirements for which are further discussed in Resolution No. 239/1996, to control occupational risks for any particular companies or establishments designated as “critical” by the appropriate authority for unsatisfactory compliance or accident rates. Any “[d]iscrepancies regarding the implementation of the action plan will be resolved by the Superintendency of Work Risks” (article 4). Fines are imposed on the employer if accidents or diseases resulted from “any breach... of the rules of hygiene and safety at work” (article 5). Covered contingencies, monetary benefits, and benefits in kind are described (chapters III-IV). Medical commissions will resolve questions surrounding the nature of any accidents or illnesses, disabilities, and benefits (chapter VI). A Work Risk Insurer cannot reject an individual worker if it insures his or her employer (article 27). Various duties of the parties are stated, including that of the Work Risk Insurer to “denounce breaches of its affiliates of hygiene and safety at work [before the Superintendency of

Work Risks]” (chapter IX). A Guarantee Fund is created to finance compensation if an employer is declared by a court to have insufficient equity (chapter X). Similarly, a Reserve Fund is created to cover benefits if a Work Risk Insurer is liquidated (chapter XI). The Superintendency of Work Risks is created (chapter XII). If harm under article 6 is caused by a third party beyond the employer, the injured party may seek civil damages from which benefits granted by the Work Risk Insurer will be deducted (chapter XIII).

Law No. 26773 (note: Compensation system for “damage from work accidents and occupational diseases”): This is the general law governing payouts under the workers’ compensation system. Monetary compensation should “cover the partial or total reduction produced in the victim worker’s fitness for productive or economically valuable activities and [his or her] need for continued assistance in case” of disability or that of his or her family in the case of death (article 2). Compensation for additional damages not covered by system formulas is at the rate of 20%, and the minimum compensation for death or total disability is 70,000 pesos or about 15,400 U.S. dollars at the World Bank’s 2012 average exchange rate²⁸ (article 3). Victims must choose between the workers’ compensation system or another system of accountability such as civil litigation (article 4). To ensure fairness across systems, courts’ civil determinations should accord with the List of Occupational Diseases and Disability Evaluation Table (article 9). The Superintendencies of Insurance of the Nation and of Work Risks will create indicators to be factored into Work Risks Insurers’ compensation determination rules and must approve those rules (articles 10 and 11).

²⁸ *Official exchange rate (LCU per US\$, period average)*, World Bank Work Development Indicators (n.d.), <http://data.worldbank.org/indicator/PA.NUS.FCRE>. As the World Development Indicators database hasn’t published PPP exchange rates for Argentina beyond 2006, the 2012 nominal exchange rate is used.

Resolution No. 31231/2006 (note: Internal controls): This resolution specifies minimum procedures for the internal control systems of insurers and reinsurers. Overseeing officers are liable for the accuracy of the information that they are required to report (Annex I, section 3.16).

Resolution No. 463/2009 (note: Procedures in the relationship between employers and Work Risk Insurers): This resolution outlines requirements of contracting, monitoring, and reporting for employers and their insurers. Insurers should conduct an annual visit to the employer to confirm the “compliance of health and safety at work” (article 11). Documents that take on the character of an affidavit and include reviews of health and safety compliance, the annual prevention plan prepared by the employer, and records of confirmatory visits must be submitted to the government's Registry of Work Health and Safety Compliance (article 12).

Resolution No. 25/1997 (note: “[P]rocedure for checking and prosecution of breaches of the obligations of employers and self-insured employers” under “Law No. 24,557 and health and safety standards”): This resolution covers the procedure for filing complaints with the Superintendency of Work Risks as well as the procedures for investigations, proceedings, and decisions regarding alleged breaches.

Resolution No. 10/1997 (note: “[P]rocedure for checking and prosecution of breaches of Law No. 24,557, by the insurers and self-insured employers”): This resolution is analogous to Resolution No. 25/1997 above but for insurers and self-insured employers.

Decree No. 717/1996 (note: Submission and resolution of accident complaints): This decree governs the review of employers’ accident complaints and the determination of employee injury and disability by Work Risk Insurers. Procedures are described for the hierarchy of Medical Commissions to resolve disputes over determinations. The Superintendency of Work Risks may promulgate complementary regulations (article 35).

Resolution No. 216/2003 (note: Professional requalification training by Work Risk Insurers or self-insured employers for injured or ill workers to “retain suitable employment”): Under this resolution, the insurer or self-insured employer must hire staff to help train and place such employees (articles 2 and 3). If possible, the training should aim to reinstate the worker in the same firm (article 7(e)).

Resolution No. 239/1996 (note: “Minimum requirements” for all Improvement Plans): Under this resolution, Work Risk Insurers must prepare Improvement Plans for companies that are designated as “critical” by the responsible labor administration for unsatisfactory compliance or accident rates under Law No. 24557, article 4. A Plan must identify its associated establishment’s main activities, the risks that need correcting to achieve compliance, and more.

Resolution No. 1139/2004 (note: “[A]ction to be implemented” regarding “Witness Companies that do not improve prevention of occupational hazards”): This resolution outlines procedures for intervention in particular companies designated as “Witness Companies” by the Superintendency of Work Risks for not having improved prevention for three terms in a row. “Witness” status seems to be a separate designation from that of “critical” status by the responsible labor administration, which requires issuance of an Improvement Plan under Law No. 24557, article 4. The Work Risk Insurer should have employee representatives sign the Program for Claims Reduction (Annex I, section 2.1). The Superintendency may itself or in conjunction with labor administrations conduct inspections (Annex I, section 1.4) and may suggest that the insurer revise the Program (Annex I, section 2.2).

Resolution No. 28754/2002 (note: Accounting system for the Work Risk Insurer “Professional Illness Trust Fund”): This resolution provides that Work Risk Insurers should

maintain the Trust Fund according to special legal and accounting rules to cover certain occupational illnesses.

Other Relevant Social Protection/Insurance

Law No. 23660 (note: Social work/health insurance providers): This is the general law governing social work, or association-based health insurance, providers. Providers take diverse forms, including trade unions, mixed administration institutes created by law, the federal government, private and state companies, professional associations, the Armed Forces, and more (article 1). At least 80% of gross proceeds should be spent on health care, and 70% of proceeds collected must be spent in the same jurisdiction (article 5). At most 8% of proceeds minus contributions to the Solidarity Redistribution Fund described in Law No. 23661 may go to administrative expenses (article 22). All employees must be covered by such health insurance (article 8). Certain family members must be included (article 9). Coverage must be maintained without an obligation to make contributions during leave due to workplace injury or illness (article 10(b)). Employers should contribute 5% of remuneration and employees 3% of compensation, plus 1.5% per additional beneficiary specifically designated under the last section of article 9 beyond primary family members and certain housemates except as provided in CBAs and in certain other circumstances in place at implementation (article 16).

Law No. 23661 (National Health Insurance): This is the general law governing the National Health Insurance system. Article 49 lays out the specific requirements for jurisdictions' adherence to the law, including providing for coverage of the self-employed and other individuals with permanent residence in the jurisdiction but without adequate health insurance. Health benefits are to be "equal" across those covered, including without distinction by gender (articles 1 and 2). The national government is to pursue progressive decentralization of health

benefits to the jurisdiction of the provinces, and powers provided in the Act to the Secretary of Health and the National Health Insurance Administration (as eventually integrated into the Superintendency of Health Services) may be delegated to provinces after concluding appropriate agreements (article 4). A Solidarity Redistribution Fund will be financed from partial allocations taken out of the national general budget and the provinces with a 50/50 split, payments to social work providers, and more. It will be used to financially support jurisdictions in providing coverage of the “uninsured and under-resourced” (articles 21, 22, and 24). Rules for the provision of health benefits and the adjudication of offenses are described (chapters VI and VII).

Law No. 22431 (Comprehensive Protection System for the Disabled): This law provides legal protections and social benefits to people with disabilities. “Permanent functional impairment... involv[ing] considerable disadvantages for... work” qualifies a person as disabled under the Law (article 2). The state should provide rehabilitation, professional training, “differential social security schemes,” and more for people with disabilities (article 4). It should also implement tailored medical services and living facilities for people with disabilities (articles 6 and 7). The physical accessibility of spaces and buildings is also regulated (chapter IV).

Resolution No. 104/1998 (note: Cash benefits for provisional Permanent Disability): Under this resolution, cash benefits for provisional Permanent Disability “must be paid within the same period” as those for Temporary Labor Disability.

Law No. 24901 (Basic Benefit System for... Rehabilitation for People with Disabilities): This law obligates social work providers to meet outlined standards regarding information and health care benefits and other services that are provided to people with disabilities (article 2), and obligates the state to do so for people with disabilities not covered by the social work system (article 4). The various funding sources are outlined (article 7). Benefits that must be provided

include rehabilitation, prosthetics, dental, basic skills training, job training, and alternative living facilities (chapters IV-VII).

Law No. 20475 (Special Arrangements for the Disabled): This law “creates a special pension scheme for disabled people.”

Joint Resolution Nos. 27248/1999 and 14/1999 (note: Annuity insurance for workers with total and permanent disabilities): This joint resolution approves annuity insurance for workers with disabilities to be “marketed” by authorized retirement insurance companies (article 1).

Workplace Harassment

Sexual harassment at work has not yet been adequately addressed by Argentina’s legal system. Decree No. 2385/1993 prohibits harassment by a superior within the staff hierarchy of Argentina’s National Public Administration.²⁹ Some courts have awarded civil damages for workplace harassment in suits against the employer or perpetrator.³⁰ And sexual harassment may qualify as sexual abuse under book II, title III, chapter II of the Penal Code and thus as a criminal offense if it involves at least “violence, threats, [or] coercive or intimidating abuse of a relationship of dependency, authority, or power, or taking advantage of” a victim that has not freely consented (article 119).³¹ But it appears that there is no national Argentine law criminally penalizing any sexual harassment in the private sphere short of criminal abuse, let alone in workplaces.³² Draft laws have been considered as recently as May 2013.³³ Until a law is

²⁹ See *Decree 1797/1980*, Ministerio de Economía y Finanzas Públicas (n.d.), Article 28 (updated), <http://www.infoleg.gob.ar/infolegInternet/anexos/15000-19999/19201/teexact.htm>.

³⁰ See *Un nuevo derecho laboral: ahora, el Mobbing en el contrato de trabajo argentino*, Estudio Bilbao Aranda (May 4, 2010), <http://estudiobilvaoaranda.blogspot.com/2010/05/un-nuevo-derecho-laboral-ahora-el.html> (This post in Spanish provides a summary of the jurisprudence on workplace harassment as of 2010).

³¹ Cód. Pen. (Arg. 1984), available at <http://www.infoleg.gov.ar/infolegInternet/anexos/15000-19999/16546/teexact.htm>.

³² There are relatively recent sources saying explicitly that there isn’t such a law. See Florencia Stero, *Proyecto de ley nacional contra la violencia y acoso sexual laboral*, Asociación Civil (Nov. 30, 2011), [http://acosados.com.ar/index.php?option=com_content&view=article&id=11:proyecto-de-ley-nacional-contra-la-](http://acosados.com.ar/index.php?option=com_content&view=article&id=11:proyecto-de-ley-nacional-contra-la)

implemented, however, Argentina will not have fulfilled its international legal pledge to act: Building on the principles of Convention to Eliminate All Forms of Discrimination Against Women, its Optional Protocol, and ILO Convention No. 111 as approved by Laws No. 23179, 26171, and 17677, respectively, the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women as approved by Law No. 24632 may represent Argentina's most unambiguous international obligation to act. Under article 7, the government must "pursue policies to prevent, punish and eradicate" violence against women, which under article 2 explicitly includes workplace sexual harassment.³⁴ For now, several subnational governments, including the provinces of Buenos Aires, Tucumán, Jujuy, Misiones, and Santa Fe and the city of Buenos Aires, have kept pace by prohibiting sexual harassment in their governments (and, in some cases, affiliated entities like partially state-owned enterprises), while Entre Rios Province has led the way by prohibiting it within both public and private employers.³⁵ See the "State/Provincial" public law section for further information.

There are related national laws that do not clearly provide causes of action for victims, including:

Law No. 26485 (Women's Comprehensive Protection Act): This law is intended "to prevent, punish and eradicate violence against women." Its scope explicitly includes sexual and

[violencia-y-acoso-sexual-laboral&catid=7:noticias&Itemid=18](http://www.lanacion.com.ar/1349557-el-acoso-sexual-mas-facil-de-probar); Paula Urien, *El acoso sexual, más fácil de probar*, lanacion.com (Feb. 13, 2011), <http://www.lanacion.com.ar/1349557-el-acoso-sexual-mas-facil-de-probar>.

³³ *PROYECTO SOBRE VIOLENCIA LABORAL Y ACOSO SEXUAL*, Cámara Argentina de Comercio (May 16, 2013),

http://www.cac.com.ar/noticia/PROYECTO_SOBRE_VIOLENCIA_LABORAL_Y_ACOSO_SEXUAL_4386.

³⁴ *Law No. 23179*, Ministerio de Economía y Finanzas Públicas (n.d.),

<http://www.infoleg.gob.ar/infolegInternet/anexos/25000-29999/26305/norma.htm>; *Law No. 17677*, Ministerio de Economía y Finanzas Públicas (n.d.),

<http://www.infoleg.gob.ar/infolegInternet/anexos/200000-204999/204127/norma.htm>; *Law No. 24632*, Ministerio de Economía y Finanzas Públicas (n.d.),

<http://www.infoleg.gob.ar/infolegInternet/anexos/35000-39999/36208/norma.htm>; Inter-American Convention on

the Prevention, Punishment, and Eradication of Violence against Women, June 9, 1994, available at <http://www.oas.org/en/mesecvi/docs/Convention-Text-EN.pdf>.

³⁵ *VIOLENCIAS EN EL AMBITO LABORAL*, Superintendencia de Riesgos del Trabajo (n.d.),

<http://www.unp.edu.ar/descargas/saludocupacional/Presentaciones/ViolenciaLaboral.pdf>.

workplace violence (articles 5(3) and 6(c)). It sets out relevant policy goals for the government and various agencies, establishes the National Women's Council to generate strategies and standards in pursuit of these goals as well as an affiliated Observatory to collect and analyze information, and describes procedures to ensure that courts provide justice to women who are victims of violence. Decree No. 1011/2010 implements this Law and empowers the National Women's Council to "issue additional rules and clarification of the regulations" under the Law (article 2).

Decree No. 254/1998 (Plan for Gender Equality Between Men and Women in the World of Work): This decree gives the National Women's Council responsibility for coordinating a workplace equality agenda that includes pushing for a law criminalizing sexual harassment in private employment (Annex I, section 1.4.3).

Hotels

*Law No. 18828*³⁶ (*Tourist Accommodation*): This is the general law governing tourist hotels. Such hotels must register their basic information (article 2) and may be eligible for government subsidies (article 5).

*Law No. 17752*³⁷ (*Promotion of Construction of International Tourist Hotels*): Under this law, Argentine companies constructing tourist hotels that meet certain size and location requirements (article 2) are eligible for various tax deductions and, at the executive branch's discretion, concessions of public land (article 10).

³⁶ *Ley Nacional de Hotelería 18828/70 y su Decreto Reglamentario 1818/76*, Observatorio Turístico de Argentina (n.d.), http://www.observatur.edu.ar/index2.php?option=com_content&do_pdf=1&id=54.

³⁷ *Law No. 17752*, CONSULEX (n.d.), <http://consulex.com.ar/Legislacion/Leyes/L0017752.htm>.

*Decree No. 1818/1976*³⁸ (note: *Minimum requirements for hotels*): This law outlines detailed minimum specifications and amenities for rooms at various classes of tourist hotels.

(C) State/Provincial Statutes, Regulations, and Policy

Unless otherwise specified, the laws below are accessible through the government website LEGISALUD.³⁹

Buenos Aires Province – Law No. 14408: This law creates Joint Committees on Health, Hygiene and Safety in Employment. Employers falling under article 2 must provide the Committees notice of any workplace changes they make that could affect “health and safety conditions at work” (article 6(2)).

Buenos Aires Province – Law No. 2195 (note: *Parts not described here were partially vetoed by Decree No. 67/2007*): Under this law, hotels and other highly frequented spaces face heightened fines for safety lapses like lack of fire extinguishers or improperly maintained electrical conductors.

Buenos Aires Province – Law No. 2183: This law states that employers must maintain health examination records for employees of certain types, including hotel workers.

Autonomous City of Buenos Aires – Law No. 1225:⁴⁰ This law prohibits workplace violence, including bullying and sexual harassment, in the government. It applies to wage inequality between genders as a form of abuse. Possible sanctions against perpetrators range from suspension for 30 days to dismissal or impeachment (article 6). Joint and several liability extends to the employing government authority as well if it was notified and failed to take “immediate and appropriate action to correct the situation.” The perpetrator need not directly

³⁸ *Ley Nacional de Hotelería 18828/70 y su Decreto Reglamentario 1818/76*, *supra* note 36.

³⁹ LEGISALUD, Ministerio de Salud (n.d.), <http://leg.msal.gov.ar/index2.htm>.

⁴⁰ *Law No. 1225*, CENTRO DE DOCUMENTACIÓN MUNICIPAL (n.d.), <http://www.cedom.gov.ar/es/legislacion/normas/leyes/ley1225.html>.

supervise the victim so long as the harassment occurs within “the line of duty” (article 9).

Among the analogous laws of the provinces, only that of Entre Rios Province covers private employers, like hotels, generally.

*Buenos Aires Province – Law No. 13168.*⁴¹ This law prohibits workplace violence, including bullying and sexual harassment, in the government. Its scope includes third-party perpetrators associated with government officials (article 2, as amended by Law No. 14040).

*Sante Fe Province – Law No. 12434.*⁴² This law prohibits workplace violence, including bullying and sexual harassment, in the government. Its scope includes companies with at least majority state ownership (article 2).

*Entre Rios Province – Law No. 9671.*⁴³ This law prohibits workplace violence, including bullying and sexual harassment, within both public and private employers.

(D) The Courts and Case Law

Argentina’s court system is rooted in federalism and civil law. A relevant excerpt from the BrillOnline Foreign Law Guide summarizes as follows:

The decisions of the courts have precedential value, but these are not binding until, in the civilian tradition, a whole series of similar precedents can be isolated and described and only then applied... As an Argentine scholar explains, “Argentina’s legal system is based on detailed and comprehensive codes designed to anticipate most of the controversies the law is called upon to adjudicate. In such a system judicial decisions appear to have limited value as precedents. [However] Well-reasoned decisions tend to be followed in later cases.”⁴⁴

⁴¹ *Law No. 13168*, Ministerio de Jefatura de Gabinete de Ministros - Gobierno de la Provincia de Buenos Aires (n.d.), <http://www.gob.gba.gov.ar/legislacion/legislacion/l-13168.html>.

⁴² *Law No. 12434*, Ministerio de Gobierno y Reforma del Estado - Gobierno de Santa Fe (n.d.), <http://gobierno.santafe.gov.ar/boletinoficial/template.php?mostramenu=SI&include=boletines/04-08-2005ley12434.htm>.

⁴³ *Law No. 9671*, Gobierno de Entre Ríos (n.d.), <http://www.entrerios.gov.ar/guiaantelaviolencia/galeria/provincial-ley-9671.pdf>.

⁴⁴ Marci Hoffman, *Argentina - Legislation and the Judicial System*, BrillOnline (Nov. 15, 2013), http://referenceworks.brillonline.com/entries/foreign-law-guide/argentina-legislation-and-the-judicial-system-COM_019302#.

One class of relevant Argentine court cases likely to have stronger precedential value comprises those that apply core legal provisions, such as those found in the Constitution, international agreements, or framework laws, to affirm key labor rights relating to OSH. Such provisions tend to cite broad principles whose application is less straightforward and therefore guided more by judicial interpretation. Several such notable cases among those compiled by the ILO⁴⁵ are described below. Other courts of potential interest regarding housekeeper OSH include Argentina's National Labor Chamber of Appeals (governed by Law No. 18345),⁴⁶ Argentina's Domestic Labor Court,⁴⁷ and MERCOSUR's Permanent Review Court.⁴⁸

Supreme Court of Justice, Aquino, Isacio v. Cargo Servicios Industriales S.A., 21 September 2004, A. 2652. XXXVIII: A worker became “100 per cent incapacitated for work purposes” after he fell from a roof while carrying out his employer's instructions. He was not given safety equipment, and there was no net or other protection against falling set up. Law No. 24557 provided for a mandatory workers' compensation system whereby an employer contracts with a Work Risk Insurer to engage in risk prevention and compensate workers. The Act did not fully compensate the victim, only covering loss of income, and exempted the employer from civil liability for accidents. The court found that both the lack of full compensation and the exemption of the employer from civil liability violated article 19 of the Constitution forbidding ‘infringement on the rights of third parties’; article 14a guaranteeing protection of labor and “decent and equitable working conditions”; international instruments named in article 75, paragraph 22 including the International Covenant on Economic, Social and Cultural Rights; and

⁴⁵ *Compendium of Court Decisions – Decisions by Country*, International Training Centre – International Labour Organization (n.d.), <http://compendium.itcilo.org/en/decisions-by-country>.

⁴⁶ *Cámara Nacional de Apelaciones del Trabajo*, Poder Judicial de la Nación (n.d.), http://www.pjn.gov.ar/02_Central/Index2.Asp?Nodo=315&Rubro=2.

⁴⁷ *Tribunal del Trabajo Doméstico*, Ministerio de Trabajo, Empleo y Seguridad Social (n.d.), <http://www.trabajo.gov.ar/domestico/>.

⁴⁸ *Inicio*, Tribunal Permanente de Revisión (n.d.), <http://www.tprmercosur.org/>.

the constitutional and international human rights principle of “social justice.” Note that both of the constitutional infirmities in Law No. 24557 mentioned here are at least partially avoided under the modified liability regime effected by Law No. 26773.

Labour Court of First Instance of the Southern Judicial District, Vargas, Bernardo Silenio v. Provincial Executive Branch, Provincial Ministry of Health and Social Welfare, concerning an administrative dispute, 30 September 1998, Case No. 556, Final decision No. 565:

A hospital worker who handled human corpses could not conduct his work due to faulty machinery that violated health regulations. He provided photographs of the machinery to a trade union, which released them to the media. The worker was subsequently fired and then decided to sue, claiming his termination was retribution for sharing the photographs and thereby a violation of his exercise of freedom of expression and association. Argentina’s law on trade unions, No. 23551, guarantees freedom of association in article 1 and the right to “carry out any legal activities in defense of workers’ interests” in article 5(d), which under article 3 includes their workplace conditions. The court decided the worker’s actions were neither defamatory nor disloyal and were protected (could not be a basis for dismissal) under Law No. 23551, interpreted in light of published principles from the ILO Committee on Freedom of Association of “free flow of information, opinions, and ideas” for trade unions and the right to “pursue lawful activities for the defense of their occupational interests.”

(E) International

ILO Conventions and Recommendations (prefix “R”) relating to housekeeper OSH include numbers 106, 120, R120, 127, 148, 155, 161, 162, R164, 170, 187 (OSH), 95, 102, 121 (wages, social security, and workers’ compensation), 172, R179 (working conditions), 81 (labor inspection), and 87, 98 (collective bargaining). Numbers 120, R120, 172, and R179 pertain

specifically to hotels and restaurants. Argentina has only ratified Conventions 81 (Labour Inspection Convention, 1947), 87 (Freedom of Association and Protection of the Right to Organise Convention, 1948), 95 (Protection of Wages Convention, 1949), and 98 (Right to Organise and Collective Bargaining Convention, 1949). It has not ratified the rest.⁴⁹ For more information on ILO conventions, refer to the International Law Summary.

In order to further harmonization of OSH practices among member states, MERCOSUR has developed an Occupational Health Glossary to encourage common regulatory articulation of standards.⁵⁰ Its Social and Labor Declaration guarantees workers non-discrimination by employers (article 1), the right to “a healthy and safe working environment” (article 17), enforcement of standards through labor inspection (article 18), and social insurance against illness (article 19). But this declaration represents a pledge by Argentina and other members to promote the implementation of its objectives in national law rather than self-executing law itself.⁵¹

3. Private Law

(A) Hotel-Specific Standards

Argentina has adopted the OECD Guidelines for Multinational Enterprises and established a National Contact Point in the Ministry of Foreign Affairs to review allegations of

⁴⁹ *Ratifications for Argentina*, NORMLEX - International Labour Organization (n.d.), https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11200:0::NO::P11200_COUNTRY_ID:102536.

⁵⁰ *GLOSARIO TEMÁTICO DE LA SALUD DEL TRABAJADOR EN EL MERCOSUR*, COMISIÓN INTERGUBERNAMENTAL DE SALUD AMBIENTAL Y DEL TRABAJADOR - MERCOSUR (Nov. 2009), http://www.sertox.com.ar/img/item_full/GLOSARIO%20SALUD%20DEL%20TRABAJADOR%20-%20MERCOSUR%204.pdf.

⁵¹ *Social and Labour Declaration*, International Labour Office - MERCOSUR (2001), http://www.mercosur.int/msweb/Documentos/Publicados/Declaraciones%20Conjuntas/003671668_CMC_10-12-1998_DECL-DPR_S-N_IN_SocioLaboral.pdf.

Guideline violations by multinational companies in the country.⁵² The government opposes the inclusion of social clauses or trade-labor rights linkages in trade agreements.⁵³ Of the major multinational hotel chains operating in Argentina, Accor, Hilton, and NH Hoteles are UN Global Compact participants as of November 15, 2013, while Starwood, Howard Johnson (as part of Wyndham Hotel Group), Hyatt (with the possible exception of one of its hotels in France), and Marriott are not.⁵⁴ Of these chains, only Accor has as of that date signed a global framework agreement.⁵⁵ It signed one in 1995 with the IUF to promote international labor standards and commit to uphold basic ILO convention rights. None of the clauses of the framework agreement specifically regulate OSH.⁵⁶

The major hotel chains have corporate social responsibility programs and codes of conduct that contain very general commitments to workers' health and safety. See the International Law Summary for information on Hilton, Hyatt, Marriott, and Starwood. Specific information regarding practices at individual hotels has not been obtained.

(B) Collective Bargaining Agreements and Other Contracts

Argentina's Ministry of Labor, Employment, and Social Security catalogues Collective Bargaining Agreements online.⁵⁷ The most instructive agreements here would likely be those concluded between hotel worker and caterer union UTHGRA and the Tourist Hotels Association

⁵² Bianca Kuhl, Social Standards in Indonesia-A Review of Existing Tools and Regulations, GLOBAL TRADE UNION PROGRAM (Apr. 2003), <http://library.fes.de/pdf-files/iez/02820.pdf>; *OECD Guidelines for Multinational Enterprises - National Contact Points*, OECD (June 2013), <http://www.oecd.org/daf/inv/mne/2013NCPContactDetails.pdf>.

⁵³ Gerard Griffin, et al., *Trade Unions and the Social Clause: A North-South Union Divide?*, International Labour and Employment Relations Association (n.d.), http://www.ilo.org/public/english/iira/documents/congresses/world_13/track_3_griffin.pdf.

⁵⁴ *Participant search*, United Nations Global Compact (n.d.), <http://www.unglobalcompact.org/participants/search>.

⁵⁵ *Framework Agreements*, Global Unions (n.d.), <http://www.global-unions.org/framework-agreements.html>.

⁵⁶ For full text, see IUF/Accor International Trade Union Rights Agreement, IUF (Jan. 22, 2001), http://www.iuf.org/cgi-bin/dbman/db.cgi?db=default&ww=1&u id=default&ID=163&view_records=1&en=1.

⁵⁷ *Buscador de Convenios Colectivos de Trabajo*, Ministerio de Trabajo, Empleo y Seguridad Social (n.d.), <https://convenios.trabajo.gob.ar/ConsultaWeb/Aviso.asp>.

of the Argentine Republic, which represents Hilton, Hyatt, Starwood, Marriott, Howard Johnson, Accor, NH Hoteles, Intercontinental, and other hotel chains.⁵⁸

In addition, the Superintendency of Work Risks hosts a catalogue of the history but not the content of the contracts between employer and Work Risk Insurer.⁵⁹

⁵⁸ *Hoteles & Filiales*, Asociación de Hoteles de Turismo de la República Argentina (n.d.), http://www.ahtra.com/filiales_hoteles_ini.php.

⁵⁹ *Historial de contratos*, Superintendencia de Riesgos del Trabajo (n.d.), <http://www.srt.gob.ar/historial-de-contratos/srt/contenidos-srt/informacion-y-tramites/historial-de-contratos>.

India

1. Industry Overview

India's hotel industry is poised to benefit from the growth of the overall tourism sector. Tourism constituted 6.6% of the overall GDP in 2012, and this is forecast to rise by 7.9% by 2023.⁶⁰ About 6.58 million foreign tourists visited India in 2012, and top ten source countries were the U.S. (16%), United Kingdom, (12%), Bangladesh (7%), Sri Lanka (5%), Canada (4%), Germany (4%), France (4%), Japan (3%), Australia (3%), and Malaysia (3%).⁶¹ Within India, over one billion domestic tourists visited other states in India in 2012.⁶² Maharashtra was the most visited state by foreign tourists in 2012 and received a quarter of all foreign tourists visiting India. Andhra Pradesh was the most visited state by domestic tourists and received a fifth of the total.⁶³

The hotel industry has expanded in size to meet the growing demand. Room supply in thirteen major cities⁶⁴ nearly quadrupled from 24,905 in 2000-01 to 93,479 in 2012-13; it is projected to grow to 143,956 by 2017-18.⁶⁵ Top twenty hotel brands by existing inventory in the thirteen major cities are: Taj Hotels & Resorts, ITC Hotels, Carlson Hospitality, Starwood Hotels & Resorts, Hyatt Hotels Corporation, Marriott International, Sarovar Hotels & Resorts, Accor Hospitality, Oberoi Hotels & Resorts, Intercontinental Hotel Group, The Leela Palaces, Hotels

⁶⁰ World Travel & Tourism Council, *India Economic Impact Report*, available at <http://www.wttc.org/research/economic-impact-research/country-reports/i/india/>

⁶¹ Ministry of Tourism, *India Tourism Statistics at a Glance 2012*, available at <http://tourism.gov.in/writereaddata/CMSPagePicture/file/marketresearch/Ministry%20of%20tourism%20English%202013.pdf>

⁶² *Id.*

⁶³ *Id.*

⁶⁴ The thirteen surveyed cities are: Agra, Ahmedabad, Bengaluru, Chennai, Delhi, Gurgaon, NOIDA, Goa, Hyderabad, Jaipur, Kolkata, Mumbai, and Pune.

⁶⁵ HVS Research, *2013 Hotels in India Trends and Opportunities*, <http://www.hvs.com/article/6499/2013-hotels-in-india-trends-opportunities/>.

and Resorts, Royal Orchid Group, Lemon Tree Hotels, Wyndham Worldwide, Hilton Worldwide, Choice Hotels, India Tourism Development Corporation, Concept Hospitality, The LaLit, and Best Western.⁶⁶

Relevant OSH statistics are scarce in India. No information was found related to the demographics of hotel housekeepers or their rate of occupational injuries. Government statistics tracking industrial injuries are only available for workers in factories, mines, railways, and ports.⁶⁷

2. Public Law

(A) Constitution

The Constitution of India contains specific provisions protecting the occupational health and safety of workers. The framework for securing social justice to all citizens laid out in the Preamble and the fundamental right to life and liberty guaranteed in Article 21 is elaborated in Part IV of the Constitution, the Directive Principles of State Policy. Articles 24 and 39 prohibit child labor in hazardous employment and child exploitation; Article 39 requires the State to “secur[e] [] that the health and strength of workers, men and women, and the tender age of children are not abused”; and Article 42 requires the State to “make provision for securing just and humane conditions of work and for maternity relief.”⁶⁸

The Supreme Court of India has interpreted the scope of these constitutional provisions broadly. In *Consumer Education & Research v. Union of India*, the Supreme Court stated that “the expression ‘life’ assured in Art. 21 of the Constitution does not connote mere animal existence or continued drudgery through life” but that “[i]t has a much wider meaning which

⁶⁶ *Id.*

⁶⁷ Government of India, Ministry of Labour and Employment, Labour Bureau, *Indian Labour Bureau Statistics 2011*, available at http://labourbureau.gov.in/ILS_2011_F.pdf

⁶⁸ See Ministry of Labour and Employment, *Annual Report, 2012-2013*, available at labourbureau.nic.in

includes right to livelihood, better standard of life, hygienic conditions in work place and leisure.”⁶⁹ In *Kirloskar Brothers Ltd. v. Employees’ State Insurance Corporation*, the Supreme Court decided that “Part IV of the Constitution enjoins not only the State and its instrumentalities but even private industries to ensure safety to the workman and to provide facilities and opportunities for health and vigor of the workman assured in relevant provision in part IV[,] which are integral part of right to equality under Article 21 which are fundamental rights to the workman.”⁷⁰

(B) National Statutes, Regulations, and Policy

General Labor

Although government legislation has been important in securing the rights of workers, enforcement has been weak. Both the Central and the State Governments are responsible for regulation of labor under the Constitution.⁷¹ The Central Government’s Ministry of Labour & Employment and the Labour Departments of States and Union Territories are responsible for occupational health and safety.⁷² Overall, many laws are limited in application according to the number of employees, sector, or other criteria.⁷³ Since the 1990s, there has been an increase in the number of persons employed as “contractors” or “casuals”; the precise relationship between contractors and employers is legally uncertain.⁷⁴ Some notable, relevant

⁶⁹ *Id.*

⁷⁰ 1996 SCC (L&S) 533, available at <http://www.indiankanoon.org/doc/555884/>; see also S.C. Srivastava, *Occupational Health of Workers in India Law & Practice*, 31 Ban.L.J.(2002) 11-42, 23.

⁷¹ Ministry of Labour and Employment, *Report of the Working Group on Occupational Health and Safety for The Twelfth Five Year Plan (2012-2017)*, available at http://planningcommission.nic.in/aboutus/committee/wrkgrp12/wg_occup_safety.pdf

⁷² *Id.*

⁷³ *Id.*

⁷⁴ Richard Mitchell, Petray Mahy and Peter Gahan, *The Evolution of Labour Law in India: An Overview and Commentary on Regulatory Objectives and Development*, Working Paper No. 18, 2012, available at https://www.academia.edu/1834715/The_Evolution_of_Labour_Law_in_India_An_Overview_and_Commentary_on_Regulatory_Objectives_and_Development

statutes are listed below. See the annex for a comprehensive list of 44 labor related statutes enacted by the Central Government.

Industrial Disputes Act, 1947 is the core piece of Central Government legislation underpinning the industrial relations system of India.⁷⁵ It establishes an industrial dispute resolution system comprising three stages: negotiation, conciliation, and adjudication. It provides for protection against and compensation for dismissal. It does not, however, impose a duty upon employers to bargain with trade unions.⁷⁶ *The Industrial Disputes (Amendment) Act, 2010* permits a worker to make a direct application to the Labour Court/Tribunal for adjudication of a dispute after 45 days from the date of his application to the conciliation officer—individual disputes need not turn into a collective dispute any longer even if it has the potential of becoming a collective dispute.⁷⁷

Contract Labour (Regulation and Abolition) Act, 1970 prohibits the use of contract labor under certain conditions and regulates its use in others. It applies to workplaces that employ twenty or more people. In addition to general provisions on conditions of work, it contains some broad provisions on health and safety, namely for the provision of canteens, restrooms, drinking water, latrines, and first-aid facilities.⁷⁸

Maternity Benefit Act, 1961 provides both pre-natal and post-natal leave entitlements and wage allowances for female employees. It applies to all workers covered by the *Shops and Establishments Acts*.⁷⁹

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ Chandra Kumarjohri, *Labour Law In India* 84, 2012.

⁷⁸ *The Contract Labor Act, 1970*, The Chief Labour Commissioner's website, available at <http://clc.gov.in/Acts/shtm/cla.php>

⁷⁹ *Id.*

Equal Remuneration Act, 1976 prescribes equal remuneration for males and females performing the same work.

General OSH

Despite the constitutional mandate to provide for the health and safety of workers, India has not implemented comprehensive national legislation on occupational health and safety covering all sectors of the economy. Sector-specific statutes provide safety and health regulations for workers in factories (Factories Act, 1949), mining (Mines Act, 1952), docks (Dock Workers (Safety, Health and Welfare Rules) Act, 1986), and construction (Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996).⁸⁰ National-level statistics for injuries resulting from work accidents are collected for only factories, mines, railways, and ports.⁸¹ No national legislation regulates OSH for the hotel industry, and no national-level statistics are collected for work accidents in hotels.

The Factories Act, 1949 is the first of law whose core purpose is to ensure the health and safety of workers. It contains detailed provisions on health and safety requirements that address cleanliness, ventilation, lighting, drinking water, among others. Although this Act is explicitly limited to factories, it contains one provision on excessive weights particularly relevant to the work performed by housekeepers:

Excessive weights. (1) No person shall be employed in any factory to lift, carry or move any load so heavy? as to be likely to cause him injury. (2) The State Government may

⁸⁰ See Fifth India-EU Seminar on Employment and Social Policy, “*Occupational Health and Safety*”, September 2011, available at <http://labour.nic.in/upload/uploadfiles/files/Divisions/LC%26ILAS/Background%20note.pdf>. Other national statutes regulating OSH are: The Dangerous Machines (Regulation) Act, 1983; The Insecticides Act, 1968; The Beedi and Cigar Workers’ (Conditions of Employment) Act, 1966; The Municipal Solid Waste (Management and Handling) Rules, 2000 notified under the Environment (Protection) Act, 1986; The Manufacture, Storage & Import of Hazardous Chemicals Rules, 1989; The Electricity Act, 2003. See the Report of the Working Group on Occupational Health and Safety for The Twelfth Five Year Plan (2012-2017), Ministry of Labour and Employment, 2011, available at http://planningcommission.nic.in/aboutus/committee/wrkgrp12/wg_occup_safety.pdf

⁸¹ *Indian Labour Bureau Statistics, 2011*, available at <http://labourbureau.nic.in/reports.htm>

make rules prescribing the maximum weights which may be lifted, carried or moved by adult men, adult women, adolescents and children employed (Chapter IV, Art. 34)⁸²

This is the kind of provision that may benefit hotel workers if it existed.

The Directorate General of Factory Advice Service & Labour Institutes (DGFASLI) within the Ministry oversees OSH enforcement for factories and ports, and the Directorate General of Mines (DGMS) does the same for mines. No corresponding agency performs a similar function in the hotel industry.

National Policy on Safety, Health & Environment at Workplace was declared by the Ministry of Labour and Employment in 2009.⁸³ In its Preamble, the Policy refers to the Directive Principles in Part IV the Constitution and affirms that the “Government of India firmly believes that . . . safe and healthy working environment is recognized as a fundamental human right.”⁸⁴ The Policy provides for a set of broad national goals and objectives that include enacting comprehensive OSH legislation that covers all sectors of the economy. The Action Programme portion of the Policy document concretizes the goals and objectives by referring to concrete requirements, such as establishing “an effective enforcement machinery as well as suitable provisions for compensation and rehabilitation of affected persons” and “providing for training programmes to increase the number and competence of personnel engaged in the field of occupational safety, health and environment at workplace”.⁸⁵ Despite the forward vision embodied in the Policy and the Action Programme, there is little evidence its goals have been

⁸² *The Factories Act, 1948*, <http://www.ilo.org/dyn/natlex/docs/WEBTEXT/32063/64873/E87IND01.htm>

⁸³ *National Policy on Safety, Health & Environment at Workplace*, available at http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---sro-bangkok/documents/policy/wcms_182422.pdf

⁸⁴ *Id.*

⁸⁵ *National Policy on Safety, Health & Environment at Workplace*, Section 4.

implemented. Nevertheless, the Policy is might useful for holding the government accountable for promises it has made, and perhaps help to eventually pave the way for national legislation.

Workers' Compensation

The Workmen's Compensation Act, 1923 requires employers to provide compensation for injuries sustained during the course of work.⁸⁶ The employee must fall within the meaning of workman in Schedule II of the Act or fall under other exceptions to be eligible for compensation. It is unclear whether hotel housekeepers may be covered under this Act according to its definitions. However, some state *Shops and Establishments Acts*—for example, those of Maharashtra, Karnataka, and Goa—have provisions for the application of the *Workmen's Compensation Act* for all employees that fall under the *Shops and Establishments Acts*, including hotel workers.⁸⁷

The Employees' State Insurance Act, 1948 provides for the establishment of a social security scheme for workers in cases of sickness, maternity, and employment injury. The Act covers workers in establishments employing twenty or more workers,⁸⁸ These include hotels that are only engaged in “sales” and not having any “manufacturing” activity. But the definition of manufacturing is based on the one found in the *Factories Act*⁸⁹, and it is broad. Consequently, the extent to which Employees' State Insurance coverage extends to hotel housekeepers is unclear.

⁸⁶ The title has been amended to Employee's Compensation Act.

⁸⁷ See Section 2(c) *infra*.

⁸⁸ ESI also covers workers in factories employing 10 or more workers. The Employees' Compensation Act of 1923 does not cover workers covered under the ESI.

⁸⁹ Employees' State Insurance Corporation, *Frequently Asked Questions on ESI Scheme*, available at rwww.esic.nic.in/Publications/FAQ_ESIC_181210.pdf

Other Relevant Social Protection/Insurance

Employees' Provident Fund and Miscellaneous Provisions Act, 1952 has given rise to three major schemes designed to provide for workers in their retirement or for their dependents in case of spousal loss.⁹⁰ As initially written, the Act established the Employees' Provident Fund, which requires employers and employees to contribute.⁹¹ The scheme is now widespread across most States, but does not apply to workers earning more than a specified amount.⁹² Other schemes were subsequently introduced under this legislation, including the Deposit-Linked Insurance Scheme of 1976, and the Employees' Pension Scheme of 1995.⁹³

Workplace Harassment

*The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redress) Act 2013*⁹⁴ brings into force the Supreme Court's 1997 decision in *Vishaka v. State of Rajasthan* that required that women be provided a safe workplace, free from sexual harassment.⁹⁵ It requires workplaces with more than ten employees to establish Internal Complaints Committees ("ICC") consisting of at least four employees under the Chairpersonship of a senior woman. Female employees can file a complaint with the ICC, which must then investigate the allegations and provide recommendations to the employer. Employers are required to provide training and education on the harms of sexual harassment. An employer found in violation of the Act may be

⁹⁰ Mitchell, Mahy and Gahan, *supra* note 74.

⁹¹ *Id.*

⁹² *Id.*

⁹³ *Id.*

⁹⁴ *The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redress) Act 2013*, available at <http://wcd.nic.in/wcdact/womenactsex.pdf>

⁹⁵ See Priti Suri, *India: Preventing Sexual Harassment In The Workplace: Statutory Protections For Women In India*, <http://www.mondaq.com/india/x/265802/employee+rights+labour+relations/Preventing+Sexual+Harassment+in+the+Workplace+Statutory+Protections+for+Women+in+India>

liable for a monetary penalty of up to 50,000 rupees. Repeated offenses could result in the fine being doubled and cancellation of business licenses.⁹⁶

Hotels

No national laws regarding OSH directly regulate the hotel industry. For examples of state laws, see the discussion in Section 2(c) below.

(C) State/Provincial Statutes, Regulations, and Policy

The Shops and Establishments Acts enacted by various State Governments regulate the hotel industry. These acts vary from state to state and do not all contain specific provisions regarding OSH. According to the Labour Bureau Report, 18 states and one union territory (Delhi)⁹⁷ have promulgated *Shops and Establishments Acts*. In 2010, the Acts applied to over 6 million shops and commercial establishments, and 12 million of their employees.⁹⁸ Of these 6 million, 372,000 businesses were Cinemas, Theaters, Hotels, or Restaurants, which employed 1.36 million employees.⁹⁹

Concerning the regions of interest, Maharashtra enacted *The Bombay Shops and Establishments Act* in 1948 that applies to 241 local areas; Goa enacted *The Goa Shops and Establishments (Amendment) Act* in 2001 in all districts of Goa and banks; Karnataka enacted *The Karnataka Shops and Commercial Establishments Act* in 1961 that applies to 32 subdivisions of the state. In Maharashtra and Karnataka, the Acts appear to leave out certain local areas.

⁹⁶ *The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redress) Act 2013*, Chapter VIII.

⁹⁷ There are 28 States and 7 Union Territories in total.

⁹⁸ *See id.* Exact figures are 6,113,989 shops and establishments; 12,040,130 employees.

⁹⁹ *See id.* Exact figures are 371,782 cinemas, theaters, hotels and restaurants (6.08% of shops and establishments covered under the Acts); 1,355,620 employees (11.26%). Further breakdown of figures is not available.

Enforcement of these Acts, carried out by the state authorities, follows a “policy of persuasion,” that “institute prosecutions only as a last resort in extreme cases of continuing defaults.”¹⁰⁰ Nevertheless, among the States and Union Territories that reported to the Central Government’s Labour Bureau in 2010, state labour agencies conducted 1,045,048 inspections and launched 291,772 prosecutions, while state courts disposed of 223,383 cases and fined Rs. 68,829,104 to the defending establishments.¹⁰¹ Sample offenses included “non-payment of wages, arrears, bonus, overtime, leave with wages, non-maintenance of prescribed records and registers, non-display of notices and non-observance of working hours, weekly holidays, etc.”¹⁰²

The Weekly Holidays Act, 1942 is enforceable in states that have chosen to promulgate and enforce the act, but it appears to be enforceable only in certain areas of Karnataka.¹⁰³ The *Shops and Establishments Acts of Maharashtra, Goa, and Karnataka*, however, contain provisions for one day of weekly holiday.

Maharashtra

In Maharashtra, 355,216 persons were employed in 75,492 cinemas, theatres, hotels and restaurants in 2010.¹⁰⁴ *The Bombay Shops and Establishments Act, 1948* (“Bombay Act”) contains a chapter on Health and Safety,¹⁰⁵ requiring shops and establishments, including hotels, to maintain cleanliness, ventilation, lighting, precautions against fire and a first aid kit if

¹⁰⁰ Labour Bureau, *Report on the Working of the Legislation Governing Conditions of Employment in Shops, Commercial Establishments, Theatres, Hotels and Restaurants During the Year 2010*, available at http://labourbureau.nic.in/REPORT_WOTLGCOEIShops_2010.pdf

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ *Id.* The information provided in the Labour Bureau’s Report on the Working of the Legislation Governing Conditions of Employment in Shops, Commercial Establishments, Theatres, Hotels and Restaurants in 2010 may be incomprehensive, however. The Labour Bureau reprimands state agencies for not furnishing data to the Bureau in the Report. Only 17 States (of 28 total) and three Union Territories (of seven total) provided data to the Bureau in 2010.

¹⁰⁴ *Id.*

¹⁰⁵ *The Bombay Shops and Establishments Act, 1948*, available at Government of Maharashtra, Department of Labor website <http://www.mahashra.gov.in/index.html>

manufacturing is carried out on premises.¹⁰⁶ The provisions of the chapter are very broad and not as detailed as those found, for example, in the national *Factories Act*. Chapter IV of the Bombay Act also contains provisions regulating work hours of hotel employees (a maximum of 9 hours per day and 48 hours per week); overtime hours (maximum 3 hours per day); interval for rest (minimum of one hour for 5 consecutive hours of work); and weekly holiday. In 2010, Maharashtra, the second most populous state in India, reported the highest number of inspections (533,576), prosecutions (241,883), number of disposed cases (175,955), and the amount of realized fines (Rs. 52,853,329) to the Labour Bureau.¹⁰⁷

Section 38A of the Bombay Act applies the *Workmen's Compensation Act, 1923* to employees of establishments to which the Bombay Act applies. In *Vasudev Anant Kulkarni v. Executive Engineer, M.S.E.B.* 1994 II CLR 172 (Bom.D.B.), the Bombay High Court held that “a legal fiction has been created in the provision contained in Section 38-A to show that employees covered under the Bombay Act are to be treated as the workmen as defined under the *Workmen's Compensation Act, 1923* for the purpose of redressing their grievances for

¹⁰⁶ “CHAPTER VIII: Health and Safety

39. Cleanliness.-The premises of every establishment shall be kept clean and free from effluvia arising from any drain or privy or other nuisance and shall be cleaned at such times and by such methods as may be prescribed. These methods may include lime washing, colour washing, painting, varnishing, disinfection and deodorising.

40. Ventilation.-The premises of every establishment shall be ventilated in accordance with such standards and by such methods as may be prescribed.

41. Lighting.- (1) The premises of every establishment shall be sufficiently lighted during all working hours.

(2) If it appears to an Inspector that the premises of any establishment within his jurisdiction are not sufficiently lighted, he may serve on the employer an order in writing specifying the measures which in his opinion should be adopted and requiring them to be carried out before a specified date.

42. Precautions against fire.-In every establishment except such establishment or class of establishments as may be prescribed, such precautions against fire shall be taken as may be prescribed.

42-A. First-Aid.-In every establishment wherein a manufacturing process as defined in clause (k) of section 2 of the *Factories Act, 1948*, (LXIII of 1948) is carried on, there shall be provided and maintained a first-aid box containing such articles as may be prescribed.]”

¹⁰⁷ Labour Bureau, *Report on the Working of the Legislation Governing Conditions of Employment in Shops, Commercial Establishments, Theatres, Hotels and Restaurants During the Year 2010*.

compensation.”¹⁰⁸ Thus, even though the appellant clerk clearly did not fall within the definition of workman in the *Workmen’s Compensation Act*, the Bombay High Court held that the Bombay Act created a legal fiction by which the clerk is treated as a workman within the definition of the *Workmen’s Compensation Act*. This means that hotel housekeepers in the areas of Maharashtra that the Bombay Act applies are covered under the *Workmen’s Compensation Act* given that they satisfy other requirements.

Karnataka

In Karnataka, 108,783 persons were employed in 15,288 cinemas, theatres, hotels and restaurants in 2010.¹⁰⁹ *The Karnataka Shops and Establishments Act, 1961*¹¹⁰ does not contain specific provisions regulating occupational health and safety. It contains provisions on hours of work (maximum 9 hours per day/48 hours per week); overtime work (maximum of total work, including overtime, 10 hours per day with exceptions); maximum of 50 hours of overtime in 3 consecutive months; extra wages for overtime work (twice the regular rate); interval for rest (minimum one hour for 5 consecutive hours of work); one day of weekly holiday; annual leave with wages, etc. It also contains the same language (in Section 22) as the Bombay Act in applying the *Workmen’s Compensation Act* to those covered under the Karnataka Act. In 2010, the state administered 37,332 inspections and launched 2,646 prosecutions; the courts disposed of 2,434 cases and fined a total of Rs. 5,715,375.¹¹¹

¹⁰⁸ *Vasudev Anant Kulkarni v. Executive Engineer, M.S.E.B.* 1994 II CLR 172 (Bom.D.B.), available at <http://indiankanoon.org/doc/152859/>

¹⁰⁹ Labour Bureau, *Report on the Working of the Legislation Governing Conditions of Employment in Shops, Commercial Establishments, Theatres, Hotels and Restaurants During the Year 2010*

¹¹⁰ *The Karnataka Shops and Establishments Act, 1961*, available at <http://karunadu.gov.in/karnatakachildlabour/ChildLaborLawsRights/Karnataka%20shops%20and%20commercial%20establishment%20act.pdf>

¹¹¹ Labour Bureau, *Report on the Working of the Legislation Governing Conditions of Employment in Shops, Commercial Establishments, Theatres, Hotels and Restaurants During the Year 2010*

Goa

In Goa, 1178 persons were employed in 176 cinemas, theatres, hotels and restaurants in 2010.¹¹² *The Goa, Daman and Diu Shops and Establishments Act, 1973*¹¹³ contains broad provisions regulating cleanliness, ventilation and lighting, precautions for fire, and maintenance of a first aid box.¹¹⁴ It also contains provisions for hours of work (maximum 8 hours per day/48 hours per week) overtime (maximum 6 hours per week); overtime wages (twice the regular rate); interval rest (minimum one hour for 5 consecutive hours of work); one day of weekly holiday; holidays with wages, etc. In Section 63, it also states that the provisions of the *Workmen's Compensation Act* shall apply to the employees under the Goa Act. In 2010, the state

¹¹² Labour Bureau, *Report on the Working of the Legislation Governing Conditions of Employment in Shops, Commercial Establishments, Theatres, Hotels and Restaurants During the Year 2010*

¹¹³ *The Goa, Daman and Diu Shops and Establishments Act, 1973*, available at <http://egov.goa.nic.in/rtipublic/main.aspx>

¹¹⁴ "CHAPTER V: Health & Safety

20. Cleanliness.— The premises of every establishment shall be kept clean and free from effluvia arising from any drain or privy or other nuisance and shall be cleaned at such times and by such methods as may be prescribed.

21. Ventilation and Lighting.— (1) The premises of every establishment shall be ventilated as provided for in the laws relating to the municipalities, gram panchayats or other local authorities in force in the Union territory. I question the spacing of this formatting. Why is (1) starting in the middle of a line and (2) not only starts on a new line of its own, but indented once, and (2)(b) gets similar treatment?

(2) (a) The premises of every establishment shall be sufficiently lighted during all working hours.

(b) If it appears to an Inspector that the premises of any establishment within his jurisdiction are not sufficiently lighted, he may serve on the employer an order in writing specifying the measures which in his opinion should be adopted and requiring them to be carried out before a specified date.

22. Precautions for the safety of employees in establishments.— (1) In every establishment, other than such establishment or class of establishments as the Government may, by notification, specify, all precautions against fire shall be taken as may be prescribed.

(2) If power-driven machinery is used, or any process, which, in the opinion of the Government, is likely to expose any employee to a serious risk of bodily injury is carried on, in any establishment other than such establishment or class of establishments as the Government may, by notification, specify such precautions, including the keeping of first aid box, shall be taken by the employer for the safety of the employees therein, as may be prescribed."

administered 3,090 inspections and launched 109 prosecutions; the courts disposed of 99 cases and fined Rs.124,100.¹¹⁵

(D) The Courts and Case Law

India's legal system is modeled on the British common law system. The Supreme Court of India is the highest court of the land. The High Courts of 24 states are subordinate to the Supreme Court. Below the High Courts are district courts and other courts of special jurisdiction. The Supreme Court's decisions are binding upon the state courts. See Sections 2(A) and 2(B) for examples of Supreme Court case law relevant to occupational health and safety. A search for jurisprudence relating to OSH for hotel workers did not produce significant results.

(E) International

ILO Conventions and Recommendations (prefix "R") relating to housekeeper OSH include numbers 106, 120, R120, 127, 148, 155, 161, 162, R164, 170, 187 (OSH), 95, 102, 121 (wages, social security, and workers' compensation), 172, R179 (working conditions), 81 (labor inspection), and 87, 98 (collective bargaining). Numbers 120, R120, 172, and R179 pertain specifically to hotels and restaurants. India has ratified only 81 (Labour Inspection Convention, 1947), and 127 (Maximum Weight Convention, 1967).¹¹⁶ It has not ratified the rest.¹¹⁷ India may be in consultations with stakeholders for ratifying 162 (Safety in the Use of Asbestos Convention, 1986) and 170 (Safety in the Use of Chemicals at Work Convention, 1990).¹¹⁸ For more information on ILO conventions, please refer to the International Law Summary.

¹¹⁵ Labour Bureau, *Report on the Working of the Legislation Governing Conditions of Employment in Shops, Commercial Establishments, Theatres, Hotels and Restaurants During the Year 2010*

¹¹⁶ NORMLEX, *Ratifications by India*, available at http://www.ilo.org/dyn/normlex/en/f?p=1000:11210:0::NO:11210:P11210_COUNTRY_ID:102691

¹¹⁷ NORMLEX, *Up-do-date Conventions not ratified by India*, available at http://www.ilo.org/dyn/normlex/en/f?p=1000:11210:0::NO:11210:P11210_COUNTRY_ID:102691

¹¹⁸ Shyam Pingle, Occupational Safety and Health in India: Now and the Future (2012), *Industrial Health* 2012, 167-171, 169.

3. Private Law

(A) Hotel-Specific Standards

India has not adopted the OECD Guidelines for Multinational Enterprises,¹¹⁹ and the government opposes the inclusion of social clauses or trade-labor rights linkages in trade agreements.¹²⁰ Of the top twenty hotel chains by inventory, only ITC, Carlson, Accor and Intercontinental are UN Global Compact participants.¹²¹ Of these chains, only Accor has signed a global framework agreement.¹²² It signed one in 1995 with the IUF to promote international labor standards and commit to uphold basic ILO convention rights. None of the clauses of the framework agreement specifically regulate OSH.¹²³

The major hotel chains have corporate social responsibility programs and codes of conduct that contain very general commitments to workers' health and safety. See the International Law Summary for information on Hilton, Hyatt, Marriott, and Starwood. Specific information regarding practices at individual hotels has not been obtained.

(B) Collective Bargaining Agreements and Other Contracts

Collective bargaining is not widely practiced in India and is not an important part of government's labor policy.¹²⁴ The *Industrial Disputes Act* does not promote collective

¹¹⁹ *OECD Guidelines for Multinational Enterprises - National Contact Points*, OECD (June 2013), available at <http://www.oecd.org/daf/inv/mne/2013NCPCContactDetails.pdf>.

¹²⁰ Gerard Griffin, et al., *Trade Unions and the Social Clause: A North-South Union Divide?*, International Labour and Employment Relations Association (n.d.), available at http://www.ilo.org/public/english/iira/documents/congresses/world_13/track_3_griffin.pdf.

¹²¹ UN Global Compact, Participant Search, available at <http://www.unglobalcompact.org/participants/search>

¹²² *Framework Agreements*, Global Unions (n.d.), available at <http://www.global-unions.org/framework-agreements.html>.

¹²³ See IUF, *IUF/Accor International Trade Union Rights Agreement* (Jan. 22, 2001), available at http://www.iuf.org/cgi-bin/dbman/db.cgi?db=default&ww=1&u id=default&ID=163&view_records=1&en=1.

¹²⁴ Chandra Kumarjohri, *Labour Law In India*, 2012.

bargaining.¹²⁵ Nevertheless, businesses and unions are increasingly engaging in collective bargaining agreements in India.¹²⁶

¹²⁵ *Id.*

¹²⁶ *Id.*

Indonesia

1. Industry Overview

Indonesia is currently growing its tourism sector significantly and, with an influx of foreign tourists at 5% growth per year,¹²⁷ the country is simultaneously in the midst of a hotel construction boom.¹²⁸ According to recent reports, Indonesia will need 800 new hotels, or 100,000 new rooms, within the next decade to accommodate increased tourism.¹²⁹ Most tourism is currently concentrated in the provinces of Bali and Java, but with the growth of commodity and resource enterprises,¹³⁰ hotels are expanding into lesser-known provinces such as Sumatra, Kalimantan, Sulawesi, and the Papua-Maluku Islands.¹³¹

The government plans to aggressively market its alternative destinations to tourists coming from the U.S., France, the UK, the Netherlands, Germany, Russia, South Korea, India, Australia, Malaysia, Singapore, China, Taiwan, Japan, and the Philippines.¹³² Currently, hotel chains operating in Jakarta and Bali include: Marriott, Sheraton, Millennium, Melia, Le Meridien, Shangri La, Grand Hyatt, Mandarin Oriental, Pan Pacific, Golden Tulip, Ramada,

¹²⁷ David Ling & Zhang Jiahao, *Extraordinary Growth Opportunities in Indonesia for Hotel Chains*, HVS Global Hospitality Services (Dec. 2012), available at <http://thedevelopmentadvisor.com/tda/wp-content/uploads/2012/11/Indonesia-Hotel-Industry-Prospects-BNI.pdf>.

¹²⁸ From 2009-2012, the number of hotels in Indonesia grew by 4.8%. 3 Star Hotel construction led the way, followed by 5 star hotel construction, and 2 star construction. See Felia Salim, *Prospect of the Hotel Industry (Banking Perspective)*, BNI (Apr. 25, 2012), available at <http://thedevelopmentadvisor.com/tda/wp-content/uploads/2012/11/Indonesia-Hotel-Industry-Prospects-BNI.pdf>.

¹²⁹ *Up to 800 New Hotels in Indonesia*, TopHotelsProjects (Aug. 20, 2013), <http://www.tophotelprojects.com/en/800-new-hotels-indonesia>.

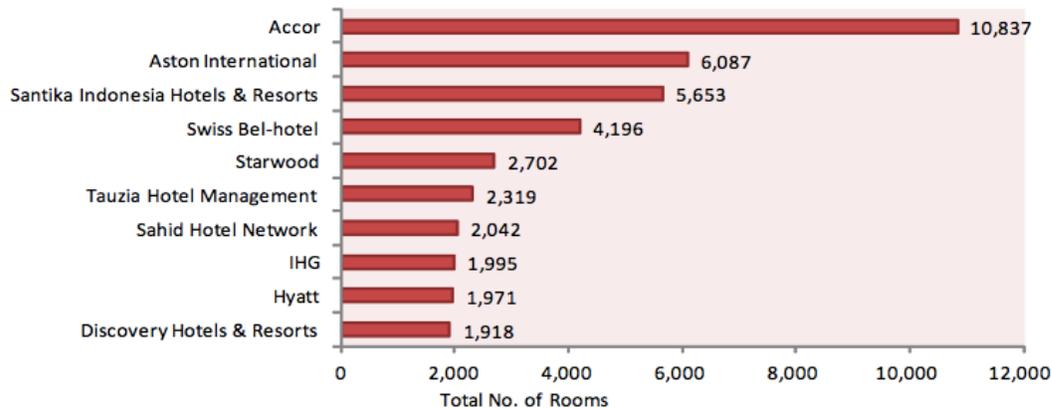
¹³⁰ *Id.*

¹³¹ Master Plan for the Acceleration and Expansion of Indonesia's Economic Development (MP3EI) Indonesia Private Equity (last accessed Oct. 20, 2013), <http://indoprivateequity.com/2012/03/25/master-plan-for-the-acceleration-and-expansion-of-indonesias-economic-development-mp3ei/>.

¹³² Brian Higgs, *Indonesia Invests in Promotions on Alternative Destinations Beyond Bali*, TTGA SIA (Sep. 28, 2012), http://www.ttgasia.com/article.php?article_id=4500.

Novotel, Westin, Sofitel, Mercure, Conrad, Oberoi, and Nikko.¹³³ Leading hotel groups in Indonesia as of 2012 are charted below:

FIGURE 3: LEADING HOTEL GROUPS IN INDONESIA, AS OF 1H 2012 (BY NUMBER OF ROOMS)



134

A number of hotel brands plan to enter the Indonesian market in the coming years, including Tauzia (Harris),¹³⁵ the Dubai-based Jumeirah Group, Pullman,¹³⁶ budget chains such as Amaris, Favehotel, Ibis Budget, POP! Hotel, Tune, and Whiz brands, and local chains such as Cipaganti International Development.¹³⁷ This extreme growth creates potential opportunities to effect change in working conditions for hotel housekeepers.¹³⁸

¹³³ *Bali and Jakarta, Indonesia*, HOTELS.COM (last accessed Oct. 20, 2013), <http://www.hotels.com/>.

¹³⁴ Ling and Jiahao, *supra* note 1.

¹³⁵ Nurfika Osman, *Indonesia Hotel Chains Gear Up for ASEAN Expansion*, JAKARTA Post (July 1, 2013), <http://www.thejakartapost.com/news/2013/07/01/indonesia-hotel-chains-gear-asean-expansion.html>.

¹³⁶ Meagan Drillinger, *Long-haul Jets Spur Indonesia's Hotel Development*, HOTEL MANAGEMENT (2011), <http://www.hotelmanagement.net/ihif-asia-pacific-e-newsletter/asia-pacific-long-haul-jets-spur-indonesias-hotel-development>.

¹³⁷ Nurfika Osman, *New Players Enter Fast-Growing Hotel Industry*, JAKARTA POST (Mar. 18, 2013), <http://www.thejakartapost.com/news/2013/03/18/new-players-enter-fast-growing-hotel-industry.html>.

¹³⁸ Emphasis on "ethical investment" has already had an influence on investor groups in Indonesia. In February, 2002, the largest pension fund in the U.S. California Public Employees' Retirement System (CalPERS) pulled out all investments from Indonesia after review of the country's social issues and human rights records. *See* Bianca Kuhl, *Social Standards in Indonesia-A Review of Existing Tools and Regulations*, GLOBAL TRADE UNION PROGRAM (Apr., 2003), <http://library.fes.de/pdf-files/iez/02820.pdf>.

Most literature on Occupational Safety and Health in Indonesia reports general statistics related to workplace accidents, without further specification as to industries examined. There appear to be very few if any reports studying the plight of hotel workers specifically.¹³⁹ One ILO study ranked Indonesia worst in southeast Asia for the number of work-related accidents in 2003.¹⁴⁰ In 2011, workplaces reported 100,000 occupational injuries for the year. However, this number was a gross underestimate, because it only surveyed the 9 million workers registered with the Social Security agency Jamsostek, out of a total Indonesian workforce of at least 30 million.¹⁴¹

Conversations with workers in the Indonesian hotel industry suggest that the primary source of injury comes from repeatedly lifting heavy mattresses, especially in cases where the guest has removed the mattress from the bedsprings or where the bed's wheels are broken, causing the bed to be unstable or at a lower height. Common injuries include sporadic back pain, shoulder pain, and perennial cold or flu-like symptoms.¹⁴² Workers clean twenty rooms per day on average, but in the most demanding hotels they may be asked to clean up to thirty rooms per day.¹⁴³ The high rate of rooms expected to be cleaned per day forces workers to work during their guaranteed hour of rest per day, meaning that at times workers take no more than one

¹³⁹ For a potentially model study on one sector's workplace hardships related to the forestry industry of Indonesia, see Seca Gandaseca & Tetsuhiko Toshimura, *Occupational Safety, Health and Living Conditions of Forestry Workers in Indonesia*, 6 J. FOR. RES. 281 (2001). For a model study that suggests ways to improve health and safety programs in comparable industries (Hotel Solid Waste Management), see Janeen Tang, *A Case Study of the Hotel Solid Waste Management Program in Bali, Indonesia*, University of Waterloo Thesis 142-144, (2004), <http://www.collectionscanada.gc.ca/obj/s4/f2/dsk3/OWTU/TC-OWTU-373>.

¹⁴⁰ *Indonesia's Work Safety Worst in SE Asia: ILO*, JAKARTAPOST (Apr. 28, 2003), <http://www.thejakartapost.com/news/2003/04/28/indonesia039s-work-safety-worst-se-asia-ilo.html>.

¹⁴¹ Muchamad Darisman, *Status of OSH in Indonesia 2011*, LION (Jan. 26, 2011), http://www.amrc.org.hk/system/files/Indonesia_0.pdf.

¹⁴² Interview with Ibis Mangaduar Hotel Employees, Nov. 12, 2013.

¹⁴³ Ibis Mangawar averages 27-30 rooms/day, Ibis Accor averages 24-27 rooms/day, 4-5 star hotels average 14-18 rooms/day. *Id.*

fifteen-minute or half hour break during a workday.¹⁴⁴

Workers at the Ibis Mangaduar use one sheet and one duvet per bed. At other hotels, workers may be required to fit up to three sheets and one blanket onto each bed per room. In addition, workers use diluted multipurpose chemicals to clean bathrooms but are not required by their employers to wear masks or hand gloves, creating the potential for long-term health risks.¹⁴⁵ On more than one occasion, an employee has fainted from inhaling chemical fumes while cleaning or ironing clothes as part of her housekeeping duties.¹⁴⁶

Outsourcing workers from third party employment agencies remains a major problem in the hotel sector. Newer hotels may contract with a preferred labor agency for their housekeepers and salaries will be paid directly by the labor agency rather than by the hotel, diminishing the bargaining position of the workers. Workers who elect not to contract through a labor agency or who remove themselves from an agency's control may be unable to find employment in the hotel sector. Contract workers and temporary workers have a more difficult time joining unions because they are easily replaceable and may be fired by management. They also do not receive equal severance pay as permanent workers.¹⁴⁷ Hotel and tourism student trainees who are required to intern at hotels for their graduation requirements for a period of 3-6 months are also occasionally asked to perform housekeeping duties without any compensation.¹⁴⁸ Finally, one major continuing labor issue has been the failure of employers to pay workers their agreed-upon service charge, an additional fee automatically paid by the hotel customer as part of the standard

¹⁴⁴ *Id.*

¹⁴⁵ *Id.* One worker stated that if the fumes become too potent during general cleaning, workers will cover their mouth and nose with a pillowcase to protect themselves from inhaling noxious fumes. Masks and gloves may be available to the workers who specifically ask for these products, but the availability varies by hotel.

¹⁴⁶ Interview with ACILS-Indonesia expert, Nov. 13, 2013.

¹⁴⁷ *Id.*

¹⁴⁸ Interview with FSPM leader, Nov. 5, 2013.

bill.¹⁴⁹

No information was found related to the demographics of the population of hotel workers employed in Indonesia. Interviews with a handful of labor leaders and hotel workers suggest there are no migrant workers in the hotel sector, and in at least one hotel, females are not employed as housekeepers unless the hotel is short of staff or at full occupancy.¹⁵⁰

2. Public Law

(A) Constitution

Indonesia's Constitution does not contain specific provisions related to occupational health and safety or worker's rights.¹⁵¹ However, Chapter XA governing human rights stipulates that "every person shall have the right to improve him/herself through collective struggle for his/her rights to develop his/her society, nation and state,"¹⁵² and guarantees that the freedom to associate will be regulated by law. Every person is also guaranteed the right to work and received "fair and proper remuneration,"¹⁵³ the right to "social security in order to develop oneself fully as a dignified human being," and the right to "enjoy a good and healthy environment, and ... to obtain medical care."¹⁵⁴

The Constitution details measures for enacting treaties into national law (art. 11). Treaties rank below statutory law and customs (applicable mainly to business law) in the hierarchy of laws followed.¹⁵⁵

¹⁴⁹ Interview with ACILS-Indonesia expert, Nov. 13, 2013.

¹⁵⁰ Interview with Ibis Mangaduar Employees, Nov. 12, 2013.

¹⁵¹ CONST. OF 1945 [INDONESIA], <http://www.embassyofindonesia.org/about/pdf/IndonesianConstitution.pdf>.

¹⁵² *Id.* art. 28-28C.

¹⁵³ *Id.* art. 28D.

¹⁵⁴ *Id.* art. 28G.

¹⁵⁵ Achmad Ali, *Law and Development in Changing Indonesia*, 8 IDE ASAN LAW SERIES 13 (2001), <http://www.ide.go.jp/English/Publish/Download/Als/pdf/08.pdf>.

(B) National Statutes, Regulations, and Policy

General Labor

Manpower Act (Law No. 13, 2003): The Manpower Act allows for collective work agreements (art. 116), stipulates procedures for the proper termination of employees (art. 150), and details the fundamental tenets of how employers should conduct industrial relations (art. 102). The act also ensures that every employee receives a wage that guarantees the right to “earn a living that is decent from the viewpoint of humanity” (art. 88), regulates strikes and lock outs (arts. 137, 146), outlaws the employment of child labor (art. 68), regulates labour inspection (art. 176) and requires the establishment of “bipartite” or “tripartite” cooperation institutes for larger organizations with unionized employees (arts. 106-107).¹⁵⁶ Article 77 calls for a working week of forty hours, with legal maximum overtime at fourteen hours per week, or three hours per day.¹⁵⁷ Article 79 refers to rest and leave requirements. Article 66 says temporary employees or employees hired from third-party labor services, shall not be employed to carry out a business’ main activities, a mandate that is commonly ignored by the hotel industry.¹⁵⁸ The act accords special protections for women who work from 11 p.m until 7 a.m., including a prohibition on the employment of pregnant women if the work between these hours would damage their health, and mandatory transportation to/from the workplace.¹⁵⁹

General OSH

Department of Manpower and Transmigration Decree No 7 (4/PMP/1964): This law

¹⁵⁶ Manpower Act (Law No. 13, 2003) (Ind.). See also Surya Tjandra, *Understanding Workers’ Law Reform in Indonesia 1998-2004*, 9 LABOUR AND MANAGEMENT IN DEVELOPMENT J 1 (2008), <http://www.nla.gov.au/openpublish/index.php/lmd/article/viewFile/1357/1641>.

¹⁵⁷ Kuhl, *supra* note 139, at 5. These provisions are better than the stipulations of the ILO Convention on Working Hours.

¹⁵⁸ See Interview with IUF-FSPM Union Organizer, Nov. 5, 2013; Interviews with Hotel Employees at Ibis Mangaduar, Nov. 12, 2013.

¹⁵⁹ Manpower Act (Law No. 13, 2003).

stipulates conditions for health, hygiene, humidity, ventilation systems, cubic air space, and dust-free workplaces. Article 2 notes that every establishment shall undertake basic OSH precautions including measures to prevent fire, accidents, poisoning, and transmission or spread of occupational diseases. The law mandates that employers must promote cleanliness, provide lighting and suitable conditions for carrying out work, ensure a proper temperature of the workplace along with sufficient ventilation, and prevent the spread of dust, gas, steam, and unpleasant smells. Article 8 provides conditions for kitchens, dining rooms, and workers who prepare and serve food and drink. It specifically notes that workers who prepare and serve food and drink must be trained in cleanliness and health and must pass a physical examination annually. Articles 11-16 cover lighting requirements.¹⁶⁰

Manpower Act (Law No. 13, 2003): Articles 86 and 87 of the Manpower Act pertain to Occupational Safety and Health standards. Article 86 provides that every worker has the right to receive occupational safety and health security, protection against immorality and indecency, and treatment that shows respect to human dignity and religious values. It calls for the creation of an occupational health and safety scheme to be implemented via statutory legislation. Article 87 requires every enterprise to apply an occupational safety and health management system, with rulings on a system's adequacy to be determined by Government Regulation.¹⁶¹

To carry out the mandated occupational safety and health schemes in enterprises, as

¹⁶⁰ Department of Manpower and Transmigration Decree No 7 (4/PMP/1964) on Conditions of Health, Cleanliness, and Lighting in Workplaces, in *Labour Protection Laws in ASEAN: A Collection of Current Laws in the six ASEAN states*, ILO 125-135 (1987).

¹⁶¹ Manpower Act (Law No. 13, 2003) (Ind.). For a better understanding of how each of these provisions is ordered via government regulation and in compliance with ILO ratified labor law conventions, see Maria Nainggolan & Yanton Sidik Pratiknyo, *Code of Conduct for SME in Bali and Makasar Indonesia: An Experimental Research*, PPM MANAJEMEN (June 7, 2013), <http://manajemenppm.wordpress.com/2013/06/07/code-of-conduct-for-sme-in-bali-and-makasar-indonesia-an-experimental-research/>.

regulated and overseen by the National Safety and Health Council of Indonesia (DK-3N),¹⁶² Indonesia's private sector contains several OSH training companies commonly called PJK3s.¹⁶³ In addition, ILO Jakarta collaborates with major Indonesian labor confederations and the Japan International Labor Foundation (JILAF) to implement joint OSH training programs to fulfill the Manpower Law's mandate.¹⁶⁴

Ministry Regulation (Permenaker 50/2012): This regulation covers the implementation of occupational safety and health management systems (SMK3).¹⁶⁵ It mandates compulsory implementation of OSH Management Systems, including auditing for enterprises with 100 or more workers wherein the work may cause occupational accidents such as explosion, fire, contamination and occupational disease. Companies must document all workplace accidents and institute periodic reviews of their OSH management systems.¹⁶⁶ Ministerial certificates are issued to companies that successfully pass their independent audit. In 2004, eight years after the initial legislation passed, only about 500 out of an estimated 170,000 enterprises had been audited for the OSH-MS.¹⁶⁷

Work Safety Act (Law No.1, 1970): This law covers all workplaces and emphasizes primary prevention.¹⁶⁸ Article 10 calls for the Department of Manpower and Transmigration

¹⁶² DEWAN KESELAMATAN DAN KESEHATAN KERJA NASIONAL [THE NATIONAL SAFETY AND HEALTH COUNCIL OF INDONESIA], <http://www.katigaonline.com/> (last accessed Oct. 25, 2013).

¹⁶³ For an example of a PJK3 website, see INDOSAFE PRATAMA <http://www.indosafepratama.com/> (last accessed Oct. 20, 2013).

¹⁶⁴ *Safety and Health at Work in Indonesia*, ILO, <http://www.ilo.org/jakarta/areasofwork/safety-and-health-at-work/lang--en/index.htm> (last accessed Oct. 20, 2013).

¹⁶⁵ Kazutaka Kogi, *Work Improvement and OSH Management Systems: Common Features and Research Needs*, 40 IND. HEALTH 121 (2002).

¹⁶⁶ See *OSH Management System and Policy*, BETTER WORK INDONESIA, http://betterwork.org/in-labourguide/?page_id=706 (last accessed Nov. 13, 2013).

¹⁶⁷ Pia K. Markkanen, Working Paper 9, Occupational Safety and Health in Indonesia, ILO 6 (2004), http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-manila/documents/publication/wcms_126058.pdf.

¹⁶⁸ Work Safety Act (Law No. 1, 1970). 2 LABOUR LEGISLATION IN INDONESIA 90-99 (1986).

(DEPNAKER) to set up a national OSH policy and ensure its smooth implementation.¹⁶⁹ As of 1984, DEPNAKER decentralized this responsibility and transferred the power of implementation to provincial governments. Under Article 15, legislative regulations to further administer the provisions of the act may prescribe penalties for the contravention of its provisions by imprisonment up to three months or a fine of 100,000 rupiahs.

Guidelines for Occupational Health Management Information System (2003): These guidelines set forth rules for the establishment of an occupational health management information system and regulate data gathering and reporting procedures.¹⁷⁰

Regulation of the Minister of Manpower concerning Occupational Safety and Health Service Companies:¹⁷¹ This regulation governs accreditation and obligations of PJK3, companies which provide K3 services to help establishments fulfill the requirements of occupational safety and health laws.

Regulation of the Minister of Manpower and Transmigration No. PER-02/MEN/1980 on Medical Examination of Workers:¹⁷² This regulation governs pre-employment, periodic and special medical examinations for workers. Note Article 2(4): For specific works it is considered necessary to perform an examination according to need in order to prevent the hazards that may arise.

¹⁶⁹ Markkanen, *supra* note 168, at 8.

¹⁷⁰ Decree No. 1075/MENKES/SK/VII/2003, ILO, https://www.ilo.org/dyn/natlex/natlex_browse.details?p_lang=en&p_country=IDN&p_classification=14&p_origin=COUNTRY&p_sortby=SORTBY_COUNTRY (last accessed Oct. 20, 2013). Original may be found in *Business News [English Edition]*, No. 7065 6A-10A (May 28, 2004).

¹⁷¹ Regulation of the Minister of Manpower concerning Occupational Safety and Health Service Companies, ILO, https://www.ilo.org/dyn/natlex/natlex_browse.details?p_lang=en&p_country=IDN&p_classification=14&p_origin=COUNTRY&p_sortby=SORTBY_COUNTRY (last accessed Oct. 20, 2013). Original may be found in *Business News*, No. 5810/5811 13A-17A (Jan. 24, 1996).

¹⁷² 2 LABOUR LEGISLATION IN INDONESIA, 186-188 (1986).

*Decree of the Minister of Manpower and Transmigration No. KEP-51/MEN/1999.*¹⁷³ This decree sets forth threshold values for exposure to noise, vibration, and radiation in workplaces.¹⁷⁴

*Regulation of the Minister of Manpower and Transmigration No. PER-04/Men/1980 on Conditions for the Installation and Maintenance of Portable Fire Extinguishers.*¹⁷⁵ This regulation states that it shall be necessary to issue a Government Regulation outlining the conditions of installation and maintenance of portable fire extinguishers.

Key Policy Goals: The National Occupational Safety and Health Council (DK3N) has initiated the Vision, Mission, Policy, Strategy and Program of OSH 2007-2010 with the aim of formulating a nationwide policy to promote OSH training and development. The council is composed of ten members from government, ten from employers' associations, and ten from trade unions, and meets every two years.¹⁷⁶ During the time period envisioned by the report, the Council managed to successfully implement two of its myriad goals: establishment of an OSH professional certification institution and a professional training and education institution.¹⁷⁷ Types of programs envisioned but not yet realized include the creation of "OSH Day" every Monday at workplaces, a special column in media outlets devoted to weekly OSH updates, and a National OSH Information Center.¹⁷⁸ DK3N has already created the Safety and Health Month, celebrated from January 12-February 12, and designated January 12 as National Work Safety

¹⁷³ Note that Regulations and Decrees are both identical types of executive orders used to implement and detail broad legislative statutes.

¹⁷⁴ Decree of the Manpower Minister No. KEP-51/MEN/1999, ILO https://www.ilo.org/dyn/natlex/natlex_browse.details?p_lang=en&p_country=IDN&p_classification=14&p_origin=COUNTRY&p_sortby=SORTBY_COUNTRY (last accessed Oct. 20, 2013). Original may be found in *Business News [English Version]*, No. 6454, pp. 9A-11A (Apr. 17, 2000).

¹⁷⁵ 2 LABOUR LEGISLATION IN INDONESIA, 189 (1986).

¹⁷⁶ Vision, Mission, Policy, Strategy and Program of National Occupational Safety and Health (OSH) 2007-2010, ILO (June 1, 2006), 6. Note that I was unable to find an English version of a report more recent than the 2010 report, although there may be a Report for the period of 2009-2014. If this report exists, it is not currently accessible on the DK3N website.

¹⁷⁷ *Id.* at 18.

¹⁷⁸ *Id.* at 10-20.

Day.¹⁷⁹

Workers' Compensation

Law No. 3/1992 on Social Security: Every company or individual employing 10 or more workers or generating a monthly payroll of at least IDR 1 million (88 USD) must apply for the Workers Social Security Program (Jamsostek). Article 10 stipulates that an employer is obliged to report an occupational accident suffered by an employee with the Office of the Department of Manpower within 48 hours. Jamsostek covers occupational accidents, death, old age, and health security. A company may choose not to enroll its employees in Jamsostek so long as the company provides an alternative social security program with comparable or better benefits (*Government Regulation No. 14/1993, as amended by Government Regulation No. 28/2002*).¹⁸⁰ Many labor organizations are dissatisfied with this law's lack of implementation. While workplaces that do not comply with Law No. 3/1992 should be fined, in practice this does not occur.¹⁸¹ Hotel workers state that if the company's pool of funds allotted to health insurance runs out, they are obligated to pay out of pocket for healthcare.¹⁸²

Manpower Act (Law No. 13, 2003):¹⁸³ Article 99 of the Manpower Act guarantees workers and their families the right to social security, administered via statutory legislation.

Jamsostek details different premiums to be paid by companies that will then be disbursed to employees who suffer from workplace accidents. Stated benefits include compensation and rehabilitation for workers from the time of the accident until full recovery. The definition of

¹⁷⁹ Markkanen, *supra* note 168, at 20.

¹⁸⁰ Doing Business in Indonesia 2012: A Copublication of the World Bank and the International Finance Corporation, IFC AND WORLD BANK 49 (2012), http://www.amrc.org.hk/system/files/Indonesia_0.pdf.

¹⁸¹ Darisman, *supra* note 142.

¹⁸² Interview with Ibis Mangaduaemployees, Nov. 12, 2013.

¹⁸³ Manpower Act (Law No. 13, 2003) (Ind.).

work-related accident comprises disability that manifests in physical *or* mental forms.¹⁸⁴

Other Relevant Social Protection/Insurance

Only 17% of the working population in Indonesia (including informal workers, which make up a large portion of this population) is covered by the formal system of social security.¹⁸⁵ The Jamsostek program itself came under criticism from low-earning workers following a 2012 reform that required salaried employers to contribute a portion of their earnings to the social security pool to remain eligible for the benefits,¹⁸⁶ without requiring employers to raise wages to compensate for what was effectively an immediate wage cut. In November 2013, the Health Ministry rolled out a pilot program for universal health care that is aimed to take effect by 2019.¹⁸⁷ Once fully operational, the program will be the largest public health care system in the world. While the pilot experiment in Jakarta has come under fire for inadequate preparation and lack of basic necessities such as hospital beds,¹⁸⁸ the program will hopefully work out its major kinks in the next five years and provide a basic minimum of care currently unavailable to most workers.

Workplace Harassment and Mental Stress

While there appears to be no studies or efforts calculated to reduce mental stresses in the workplace, Indonesia has recently made its commitment to reducing sexual harassment in the workplace a public policy priority. A study in March 2013 conducted by American universities found up to 85% of surveyed employees worried about sexual harassment, verbal abuse, and

¹⁸⁴ *Programs*, JAMSOSTEK (last accessed Oct. 20, 2013) <http://www.jamsostek.co.id/content/i.php?mid=3&id=17>.

¹⁸⁵ *Social Security in Indonesia*, ILO, <http://www.ilo.org/jakarta/areasofwork/social-security/lang--en/index.htm> (last accessed Nov. 5, 2013).

¹⁸⁶ *Indonesian Workers Rally Against Social Security Law in Jakarta*, JAKARTA GLOBE (Nov. 21, 2012), <http://www.thejakartaglobe.com/archive/indonesian-workers-rally-against-social-security-law-in-jakarta/>.

¹⁸⁷ Randy Fabi and Nilufar Rizki, *Indonesia's Nationwide Healthcare Plan Stumbles at First Hurdle*, REUTERS (May 19, 2013), <http://uk.reuters.com/article/2013/05/19/uk-indonesia-health-idUKBRE94I0CN20130519>.

¹⁸⁸ *Id.*

physical abuse.¹⁸⁹ Violence or the threat of violence to coerce sexual intercourse is a crime under Article 285 of the Indonesian Criminal Code. “Immoral acts” and “unpleasant conduct that violates the decency norm, such as kissing, groping genital parts or the breast area”¹⁹⁰ are also criminally punishable.

Better Work Indonesia, a project of the ILO, has released Guidelines for the Prevention of Workplace Harassment to help educate workers on their rights.¹⁹¹ The guidelines inform workers that all workplaces should have a policy to deal with sexual harassment, and they encourage workers to seek out their trade union representatives or LSK Bipartite Representative in cases of possible harassment.¹⁹² They also lay out recommended grievance procedures, disciplinary actions, and protection and remedial actions for violations of sexual harassment policies.¹⁹³ Although Indonesia ratified CEDAW in 1984 and has enacted several presidential decrees in the spirit of eliminating violence against women and child sexual exploitation, the Indonesian National Commission on Violence Against Women in 2012 found that more regulations are being passed that discriminate against women than are being repealed or amended.¹⁹⁴

Hotels

Sector-specific statutes on OSH, such as the Decree of the Minister of Mines and Energy

¹⁸⁹ ILO: *Better Work Indonesia Strives to End Workplace Harassment* ILO (Mar. 8, 2013), http://www.ilo.org/jakarta/info/public/pr/WCMS_208342/lang--en/index.htm.

¹⁹⁰ *Guidelines on the Prevention of Workplace Harassment*, ILO BETTER WORKINDONESIA 8 http://betterwork.org/indonesia/wp-content/uploads/Guidelines-on-the-Prevention-of-Workplace-Harassment_ENG-3.pdf (last accessed Nov. 1, 2013).

¹⁹¹ *Id.* The ILO has also released *Frequently Asked Questions: Sexual Harassment at the Workplace*, ILO DECENT WORK PROGRAMME, http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-jakarta/documents/publication/wcms_149651.pdf (last accessed Nov. 1, 2013).

¹⁹² *Frequently Asked Questions*, *supra* note 192, at 3.

¹⁹³ *Guidelines on the Prevention of Workplace Harassment*, *supra* note 40, at 17-18.

¹⁹⁴ Constance Johnson, *Indonesia: Commission Finds Many Laws that Discriminate Against Women*, GLOBAL LEGAL MONITOR (Sep. 19, 2012), http://www.loc.gov/lawweb/servlet/loc_news?disp3_l205403336_text.

on General Mining Occupational Health and Safety, 1995,¹⁹⁵ contain detailed provisions on OSH, but only apply to the named sector. Indonesia does not have any regulations relating specifically to the hotel industry.

(C) State/Provincial Statutes, Regulations, and Policy

No relevant state law has been found yet related to occupational health and safety. Internet searches do not find websites with local law databases translated into English. Interviews with labor leaders and foreign INGO workers in Indonesia similarly did not produce any relevant information related to provincial legislation.¹⁹⁶

(D) The Courts and Case Law

Indonesia's court system is comprised of a Supreme Court that oversees all courts of first instance and courts of general jurisdiction. The Supreme Court is the final court of appeal for all civilian and criminal cases, whereas disputes arising under the Constitution are heard at the Constitutional Court.¹⁹⁷ In addition, Indonesia has separate religious, military, and administrative courts with their own case law and appellate systems. As Indonesia is a civil law legal system,¹⁹⁸ judicial decisions do not create precedent and thus may not be the most useful tool in analyzing prevailing legal doctrine for OSH standards.

Law No. 2 of 2004 on the Industrial Relations Disputes Settlement: This law establishes the Industrial Relations Court and introduces guidelines for conciliation, mediation, arbitration, and alternative dispute settlement mechanisms in labor disputes. Under the previous labor dispute system, the law did not impose any criminal penalties for breach, and a number of

¹⁹⁵ Regulation 08/0524, available at <http://www.scribd.com/doc/40128102/080524-Indonesian-Mines-Reg-Decree-of-the-Minister-of-Mines-and-Energy-555>.

¹⁹⁶ See Interviews with ACILS-Indonesia, IUF-FSPM union organizer, hotel employees, Nov. 5-13, 2013 (notes on file with author).

¹⁹⁷ Chapter 3: Judicial System, ASEAN LAW ASSOCIATION, <http://www.aseanlawassociation.org/legal-indonesia.html> (last accessed Nov. 13, 2013).

¹⁹⁸ *Id.* at 82.

regulations related to labor dispute settlement provided contradictory mandates that led to inconsistent judgments and general confusion on the part of litigants and companies trying to comply with the regulations.¹⁹⁹ The IRC was intended to replace an inefficient and corrupt regional and district court system, though doubts still remain on the level of competency of the court now that it falls under the jurisdiction of the Supreme Court rather than the Ministry of Manpower and Transmigration.²⁰⁰

The few cases that unions have brought to the courts suggest that courts tend to rule in favor of corporations. The most famous hotel case to date was filed against Shangri La hotel after the dismissal of 579 union members without cause in 2000. After the ILO and Freedom of Association Committee condemned the mass dismissal, the case was brought to the Jakarta High Court, which ordered trade union activists to pay compensation for “damages” and to present a written apology to hotel owners in the five national newspapers of Jakarta.²⁰¹ In the end, the hotel chain and the workers’ union settled the matter privately and the dismissed workers were all reinstated. Details on the final negotiated settlement were not released.²⁰²

A search for jurisprudence relating to hotel workers, occupational safety, labor disputes, and worker’s compensation claims did not produce any significant results. Indonesia’s court system is difficult to research online as much of the website of the Supreme Court is not translated into English, and the search function does not pull up any cases using the aforementioned search terms. The International Training Centre’s compilation of court decisions

¹⁹⁹ *Id.* at 69.

²⁰⁰ *Indonesian Supreme Court and ILO Improving the Capacity of Industrial Relations Court Judges*, ILO (May 9, 2012), http://www.ilo.org/jakarta/info/public/pr/WCMS_180479/lang--en/index.htm. *In 2012, the ILO instituted a training system for newly appointed judges of the court. Id.*

²⁰¹ Kuhl, *supra* note 139.

²⁰² *Id.*

by country relating to labor standards does not include a section for Indonesia.²⁰³

(E) International

Indonesia is the only Asian country that has ratified all eight of the core ILO conventions.²⁰⁴ ILO Conventions relating to housekeeper OSH include numbers 120, 139, 148, 155, 161, 162, 170, 174, 187 (OSH), 12, 17, 18, 42, 121 (workers' compensation), 172 (hotels and restaurants), 81 (labor inspection), and 11, 87, 98 (collective bargaining). Indonesia has ratified Conventions 81, 87, and 98, but it has not ratified any of the other conventions related to OSH.²⁰⁵

Indonesia has not yet ratified the two ILO conventions that pertain specifically to the rights of hotel workers: the Occupational Health Services Convention (1985), which mandates that, "each member takes to develop progressively occupational health services for all workers,"²⁰⁶ and the Working Conditions (Hotels and Restaurants) Convention (1991).²⁰⁷

On the other hand, Indonesia has ratified three conventions that broadly relate to hotel workers rights: The Hygiene (Commerce and Offices) Convention (1964), the Weekly Rest (Commerce and Offices) Convention (1957), and the Employment Service Convention (1948).²⁰⁸

²⁰³ *Decisions by Country*, INTL. TRAINING CENTRE, <http://compendium.itcilo.org/en/decisions-by-country> (last accessed Nov. 13, 2013).

²⁰⁴ Indonesia Decent Work Country Programme 2006-2010, ILO 13 (June 2007), <http://www.ilo.org/public/english/bureau/program/dwcp/download/indonesia.pdf>. Note that the new Decent Country Work Programme for 2012-2015 mentions a National Programme on OSH 2009-2014 which provides the current national OSH Framework. I am so far unable to find this report. Indonesia Decent Work Country Programme 2012-2015, ILO 19 (Sept. 19, 2012).

²⁰⁵ *Ratifications for Indonesia*, ILO CONVENTIONS, https://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200_COUNTRY_ID:102938 (last accessed Nov. 13, 2013).

²⁰⁶ Article 3(1) of OSH Convention. Article 5 also calls for occupational health services to provide a whole host of duties, including surveillance of working environments, advice on planning and organization of work, contribution to measures of vocational rehabilitation, and advice on ergonomics and protective equipment. *Id.*

²⁰⁷ Working Conditions (Hotels and Restaurants) Convention (1991), http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_ILO_CODE:C172

²⁰⁸ The Weekly Rest convention was adopted into national legislation by Act No. 3 of 1961 On the Ratification of Convention No. 106 of the International Labour Organisation Concerning Weekly Rest in Commerce and Offices

The Hygiene Convention mandates that working premises should have sufficient ventilation, lighting, temperature, workstations laid out in a manner that does not produce harmful effects on workers, noise reduction policies, and mandatory first aid posts.²⁰⁹ These regulations have been codified into national legislation.²¹⁰

3. Private Law

(A) Hotel-Specific Standards

Multinational hotel chains (MNCs) in Indonesia have not currently signed onto the most traditional alternative labor regulation agreements such as social clauses, the OECD National Contact Points plan, guidelines for MNCs, the UN Global Compact, or Framework Agreements.²¹¹ The one exception is the French MNC hotel chain Accor, which signed a framework agreement in 1995 with the IUF to promote international labor standards and commit to uphold basic ILO convention rights.²¹² None of the clauses of this framework agreement specifically regulate OSH.

The major hotel chains have corporate social responsibility programs and codes of conduct that contain very general commitments to workers' health and safety. See the International Law Summary for information on Hilton, Hyatt, Marriott, and Starwood. Specific information regarding practices at individual hotels has not been obtained.

(State Gazette No. 14 of 1961). See INTERNATIONAL LABOUR CONVENTIONS RATIFIED BY INDONESIA AND THE FUNDAMENTAL PRINCIPLES AND RIGHTS AT WORK 145 (2005).

²⁰⁹ Hygiene Convention (1964). This was adopted into national legislation by the Government Act No. 3 of 1969 On the Ratification of Convention No. 120 of the International Labour Organisation Concerning Hygiene in Commerce and Offices (State Gazette No. 14 of 1969). *Id.* at 157-58 (explaining that with the ratification “work productivity will increase and the joy of work may be maintained.” *Id.* at 159).

²¹⁰ See *supra* General OSH.

²¹¹ Kuhl, *supra* note 139, at 10-15.

²¹² *Id.* For full text, see IUF/Accor International Trade Union Rights Agreement, IUF (Jan. 22, 2001), http://www.iuf.org/cgi-bin/dbman/db.cgi?db=default&ww=1&u id=default&ID=163&view_records=1&en=1.

(B) Collective Bargaining Agreements and Other Contracts

Collective Bargaining Agreements are negotiated between individual hotel branch workers and MNC hotel chains and may contain general provisions geared towards ensuring adequate healthcare and cleanliness standards. For example, Novotel Jakarta's CBA provisions on health and safety guarantee employers provide work safety equipment, teach employees how to use equipment safely, and create, maintain, and improve cleanliness of facilities.²¹³ One CBA shared by a former employee at the Hotel Gran Melia Jakarta goes into fairly specific detail on the requirements for physical examinations of housekeepers and OSH training to be provided by the hotel. Gran Melia's CBA requires workers to attend periodic health examinations, including laboratory tests, anal swabs for food and beverage servers, and x-rays.²¹⁴ Married women workers have the right to an annual pap smear.²¹⁵ Article 66 of the CBA, pertaining specifically to OSH guidelines, obliges employers to issue a Safety Manual and form an OSH committee. The CBA requires employers to be familiar with the manual and proper use of safety equipment;²¹⁶ it does not, however, attach responsibility to the employer for training workers on how to use the equipment or how to comprehend the distributed safety manual. Most CBAs for 3, 4, and 5 star hotels require annual medical check ups for workers, to be paid for by the hotel.²¹⁷ Certain hotel chains, in particular Accor, have still not signed CBAs with local unions due to obstacles from management.²¹⁸ Hotels without CBAs may have in-house safety codes of

²¹³ Interview with FSPM Union Leader, Nov. 5, 2013.

²¹⁴ SAMPLE CBA OF HOTEL GRAN MELIA JAKARTA, 2013 (on file with author).

²¹⁵ *Id.*

²¹⁶ *Id.* art 66.

²¹⁷ Interview with FSPM Union Leader, Nov. 5, 2013. While Accor has signed a general framework agreement for all of its hotels in all countries, a CBA would specify detailed provisions necessary for workers in Indonesia-specific hotels.

²¹⁸ *Id.*

conduct, which are required for any employee with over fifty workers.²¹⁹ Further research into these codes of conduct may help to understand the minimal guarantees afforded to housekeepers in most employment venues.

Local labor unions, in conjunction with global partners like IUF, have used a combination of private bargaining, court decisions, and emphasis on global standards to protest violations of workers rights in Indonesian hotels that provide good examples of the activeness of Indonesia's hotel labor unions. Examples include:

- i) 600 casual and contract workers received permanent positions at the Unilever plant in Subang, Indonesia thanks to the bargaining efforts of the IUF and the local Independent Union of Kecap Bango Workers (SPMKB).²²⁰
- ii) The Hyatt Regency Bandung reinstated two dismissed union activists following a protracted court battle and campaigning efforts by the IUF and the local hotel union Federasi Serikat Pekerja Mandiri (FSPM).²²¹
- iii) (Ongoing) Local hotel unions continue to protest the dismissal of the entire workforce of the Bali Hyatt scheduled for November 14, 2013, when the Hyatt plans to undergo renovation and turn over its staff.²²²

²¹⁹ *Id.*

²²⁰ *Indonesia: Union Secures Permanent Jobs for 600 Casuals at Unilever Joint Venture*, IUF (Mar. 2, 2013), <http://cms.iuf.org/?q=node/2253>.

²²¹ *FSPM Win for Union Rights in Hyatt Indonesia*, IUF (Mar. 25, 2013), <http://cms.iuf.org/?q=node/2324>.

²²² *Indonesia: Bali Hyatt Workers Protest Mass Jobs Destruction Under 'Temporary' Closure*, IUF (Sep. 30, 2013), <http://cms.iuf.org/?q=node/2813>.