

Thirty Successful Experiences of Redistribution, Reduction,
Recognition, Remuneration and Representation in Care Work

Constitutional and legal recognition of domestic work in Brazil



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Country or location of implementation: Brazil

Instance/s or legal framework responsible for its implementation: Constitution of the Federative Republic of Brazil and the Brazilian Ministry of Labor and Employment.

The high rate of labor informality affecting people—the vast majority of which are women—who work as paid domestic workers is a serious social and economic problem for many countries. Some countries, like Brazil, have set themselves the task of making progress in equalizing the labor rights of domestic workers with those of other workers and setting up mechanisms to enable the formalization of their work and their access to social security.

In April 2013, the Brazilian State approved an important constitutional amendment that gave a new legal foundation to domestic work (*Emenda Constitucional N° 72 de 2013, 2013*). This has been an important step forward in the fight for equal labor rights and equal treatment of domestic workers compared to other urban and rural workers; the main rights that should be guaranteed to domestic workers according to the constitutional amendment (see Table 3).

In addition to the constitutional and legal regulations, on January 31, 2018, ILO Convention No. 189 on decent work for domestic workers entered into force in Brazil. This ratification is highly advantageous as it provides an additional level to the guarantee of rights, in addition to incorporating into the legal system provisions that complement those already in force for this group of working people.

The Ministry of Labor and Employment was in charge of implementing the main actions under this policy. The formalization strategies, broadly speaking, included two types of actions: the use of an Electronic Attendance Registration System designed to record, by electronic means, the time of arrival and departure of domestic workers; and “as a complementary measure and with the purpose of harmonizing in a single government database the information of [domestic workers, a] Fiscal Registration System of tax, labor, and social security obligations, known as eSocial”. (ILO & FOR-LAC, 2015, p. 9).

The electronic register facilitated the inspection of some labor obligations such as compliance with working hours and overtime (ILO & FORLAC, 2015).

As a result of Constitutional Amendment No. 72 of 2013, the eSocial version is binding for domestic work so that the employer can comply with all their obligations.⁴

Regarding the results expected from and obtained with the action or policy, domestic workers represent around 6 million women in Brazil, which corresponds to almost 15% of employed workers, of which 5.7 million are women and 3.9 million are black women. Domestic employment is therefore of enormous importance, not only for a particular group of women who find, in this profession, one of the only sources of income available to them, but also for the country as a whole (Pineiro et al., 2020). Data from the first quarter of the 2020 Continuous National Household Sample Survey reveals that 28% of domestic workers in the country had a formal contract (Brazilian Geography and Statistics Institute (IBGE in Portuguese), 2020).

In the Brazilian context, it is important to differentiate two work modalities of paid domestic workers: “diaristas”, who receive remuneration for their daily work in different homes; and “mensualistas”, who generally work only one job and on an ongoing basis. In 2018, the latest year for which this information is available, “diaristas” accounted for 44% of all domestic workers, or 2.5 million women. Moreover, only 43.5% of “mensualistas” had a formal contract (Pineiro et al., 2020).

The results of labor formalization policies are not ideal (although, comparatively speaking, they do show progress) but, even so, regulatory protection at the constitutional and supranational levels provides important guarantees to the people who perform this work.

One of the main challenges and areas for improvement of the current labor formalization policies is to address the situation of people who work under the daily, or “diarista”, work modality. According to current legislation, the requirement for the formalization of labor contracts is only available to workers who perform their activities in the same household for three or more days a week.

4 The eSocial website has a section dedicated exclusively to informing employers of domestic work: <https://www.gov.br/esocial/pt-br/empregador-domestico/orientacoes>

Table 3. Comparison of constitutional amendments: 1988 vs 2013

FEDERAL CONSTITUTION OF 1988	2013 AMENDMENT TO THE FEDERAL CONSTITUTION OF 1988
<ul style="list-style-type: none"> • Minimum wage • Irreducibility of salary, except as provided in a collective bargaining agreement or contract • Thirteenth salary • Paid weekly rest • Paid annual leave • Maternity leave • Paternity leave • Notice proportional to the time of service • Retirement 	<p>Extension of new rights:</p> <ul style="list-style-type: none"> • Guarantee that the wage will not be lower than the minimum wage for those who receive variable remuneration • Protection of wages against withholding • Working day not to exceed 8 hours a day or 44 hours a week, with the possibility of reducing the working day by means of a contract or collective bargaining agreement • Remuneration for overtime work higher by at least an additional 50% • Reduction of occupational risks through occupational health, hygiene and safety standards • Recognition of contracts and collective bargaining agreements (XXVI) • Prohibition of unequal treatment in wages, performance of duties, or access to work based on sex, age, color, or marital status • Prohibition of any discrimination related to wages and access to work on the basis of disability • Prohibition of work at night, and dangerous and harmful work for minors under 18 years of age, and any work for minors under 14 years of age, except for apprentices
	<p>Rights that must take into account the special characteristics of domestic work:</p> <ul style="list-style-type: none"> • Protected employment relationship in the event of dismissal without just cause • Unemployment insurance • Guarantee Fund for Time of Service • Higher remuneration for nocturnal work than daytime work • Family allowance • Free assistance for children from birth to five years of age in kindergarten and pre-school • Insurance against accidents at work, at the employer's expense

Source: Program for the Promotion of Formalization in Latin America and the Caribbean (ILO & FORLAC, 2015).

Therefore, 44% of women workers (the proportion of female “diaristas”), have no legal protection to ensure the formalization of labor relations, nor is there any obligation for employers to sign their work cards or contribute to their social security and labor protection. In this context, the onus of social security protection falls on the worker herself, who can join as an individual contributor to the Social Security system or to the Individual Micro-Entrepreneur (MEI). In both cases, the monthly contribution must be made by the worker herself, and while social security rights are guaranteed (such as retirement, maternity pay and sick pay), no labor rights are guaranteed. Given the cost and difficulties of making individual contributions, only 24% of female diarists were protected by Social Security in 2018 (through a labor contract or individual contribution), and, out of those, only 9% had a labor contract and, therefore, labor rights. (Pinheiro et al., 2020, p. 13).

Another major challenge is that there is a lack of knowledge about the legal rights and obligations applicable to domestic work: most domestic workers, including the employers themselves, are not aware of the regulation of domestic work. In this sense, it is necessary to develop campaigns to disseminate labor legislation in which all available information regarding domestic work is provided. (ILO & FORLAC, 2015, p. 12).

In this regard, the Ministry of Labor and Employment has promoted some dissemination campaigns on these issues. However, the challenge of overseeing the correct enforcement of regulations related to domestic work requires a great effort on behalf of the government administration. Finally, it is important to mention there are still rights that have been incorporated into the field of domestic work which, nevertheless, depend on regulations in order to become effective.

There is no doubt that the recognition and equalization of labor rights for domestic workers in Brazil constitutes a policy aimed at remunerating and guaranteeing decent working conditions for this particular group.

For more information, visit www.gov.br/esocial/pt-br/empregador-domestico/orientacoes