

## Legal update

### Venezuela passes Workers' Councils Act

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**February 2018**

**Labour**

On February 6, 2018, the National Constituent Assembly passed the Constitutional Law of the Productive Councils of Female and Male Workers (Workers' Councils Act), published in the Official Gazette N° 41.336. Hereinafter we point out the most significant aspects of the law.

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#### **Object**

The act aims to regulate the constitution, organization and functioning of the Productive Councils of Female and Male Workers (Workers' Councils), to promote the central role of the working class and other expressions of popular power in managing the productive activity and distribution of goods and services in the public, private, mixed and communal work entities, in order to guarantee the productive development of the nation.

#### **Scope**

The act applies to public, private, mixed and communal work entities located in the national territory.

#### **Purpose**

The Workers' Councils Act's purpose is to:

- Guarantee timely access to goods and services, especially food, medicines, personal hygiene items, and all necessary inputs and services linked or related to the productive processes in general, for the people.
- Contribute to the construction of the socialist economic model, of the system of production, supply, marketing and distribution of goods and services to satisfy the needs of the people.
- Protect and safeguard productive activities from the public, private, mixed and communal work entities, to guarantee the timely access to goods and services.
- Strengthen the central role of the working class by promoting its participation in economic activity.

## Definition and governing body

The Workers' Councils are labour organizations formed in the workplace to promote, evaluate and control the processes of production, supply, marketing and distribution of goods and services to meet the needs of the people. The governing body will be the Ministry of Popular Power with competence in matters of the social work process.

## Productive councils of workers

- a. **Composition and operation:** Each work entity must have at least one Workers' Council. The Ministry of Popular Power with competence in matters of social work process may increase that number, according to the structure and area of the workplace. The Workers' Councils will have a dynamic and flexible organization that guarantees the effectiveness and efficiency in the exercise of their functions.

The Workers' Councils will be made up of three, five or seven elected workers, of which at least one must be a woman, another a young person whose age is between 15 and 35 years and another one a member of the militia. One person can fulfill these three criteria.

The Workers' Councils are not unions, so they cannot exercise union powers, nor prevent or affect the exercise of the rights of freedom of association and collective bargaining, but can cooperate with unions.

- b. **Election:** Workers' Council members will be elected by vote in a workers' assembly of the respective workplace called by the Ministry of Popular Power with competence in matters of social work process in which at least one member of the ministry must participate in order to validate it. In that same assembly, the number of spokespersons that will make up the Workers' Council will be determined.

To be spokespersons, workers must meet the following requirements: (i) Venezuelan or foreign nationality with a residence visa; (ii) age equal to or older than 15 years; (iii) not be subject to civil interdiction or political disqualification; (iv) be of recognized moral character; (v) have disposition for collective work; and (iv) be an active worker of the work entity. Workers who exercise positions of trust, management or are representatives of the employer may not be part of the Workers' Councils or participate in the assembly.

- c. **Duration and protection:** The elected spokespersons' terms will last two years and they may be re-elected. At the end of half of their period, they may be removed from office.

All the workers of the work entity shall enjoy a bar against dismissals from the moment of notification by the governing body of the call to elect the members of the Workers' Councils. In addition, the elected spokespersons will enjoy a bar against dismissal from the moment of their election, up to six months after the expiration of their term.

The spokesperson position is voluntary and does not pay a salary, remuneration or other payments in addition to that payable under the existing work relationship.

The members of the Workers' Councils shall have the following guarantees: (i) timely and confidential access and communication with the workers, the employer and the competent bodies, in order to obtain accurate information on how the productive process is being executed; (ii) free access to all areas of the work entity; and, (iii) access to the competent bodies to report any slowdown or interference in the productive process.

Likewise, they will benefit from paid and compulsory leave, as if they had worked, to attend meetings in the exercise of their functions for up to 16 hours per month, and protection against any form of discrimination.

- d. **Duties:** Amongst the duties of the Workers' Councils are the obligation to inform the Ministry of the Popular Power with competence in matters of social work process about the guidelines, plans and projects of the work entity in relation to the production policies, distribution and exchange, as well as the ways to take advantage of the resources, with the object of contributing responsibly to the fulfilment of the purposes of the Workers' Councils Act.

In addition, members must attend the meetings of the Workers' Councils and participate in the technical training sessions organized by the governing body, and report back to the workers on these meetings and sessions.

- e. **Powers:** Among the primary responsibilities of the Workers' Councils are: (i) to know, evaluate and supervise the processes of production, supply, marketing and distribution of the work entity; (ii) report employer decisions so that the latter adopts the corrective measures or recommendations made; (iii) report before the competent bodies actions contrary to the national socioeconomic system; (iv) propose and enforce the necessary preventive and corrective measures to avoid the illegitimate or illegal slowdown of activities, affecting the productive process, diversion of production lines that have the purpose of hindering access to the product and the improper use of the raw material and the available resources, except in cases of collective conflict; (v) monitor and control actions that may cause distortion of the supply mechanisms of products and services; and, (vii) denounce the actions that could be classified as speculative resale of products, hoarding, usury, boycott, fraudulent alteration of prices, contraband of extraction and other illicit acts.

Likewise, members should promote and encourage cooperation among workers; participate in actions that allow promoting and improving the production, distribution and commercialization of all the goods and services of the work entity; and carry out the other responsibilities established by the Workers' Councils Act or its regulations and resolutions.

- f. **Coordination of activities:** The Workers' Councils shall coordinate activities with the members of the ministries of the Popular Power with competence in matters of the social work process, defense, youth, sports, women and gender equality and communes; as well as the Great Mission of Sovereign Supply, the National Superintendence for the Defense of the Socioeconomic Rights; the National Superintendence of the Agrifood Management and other bodies related. They may as well conduct coordination activities with the Local Supply and Production Committee, Communal Councils and communes that surround the work entity.
- g. **Execution:** The Workers' Councils Act does not indicate the legal mechanisms for the execution of the duties and powers granted to the members of the Workers Councils.

## Sanctions

Infractions to the Workers' Councils Act will be subject to the following sanctions:

- A fine to those who block the functions of the Workers' Councils equivalent to 60 sanctioning tax units (STU<sup>1</sup>).
- A fine to the employer or his/her representative who fails to comply with the guarantees for the exercise of the functions of the Workers' Councils equivalent to 60 STU.
- A fine to the employer who engages in the dismissal, transfer or impairment of a worker protected by the bar against dismissals in accordance with the provisions of the Workers' Councils Act, equivalent to 120 STU.

The procedure to impose the sanctions will be the established in the Organic Labor Law for Male and Female Workers.

## Timeline

Within 90 days following the publication of the Workers' Councils Act, the Workers' Councils constituted in compliance with Presidential Decree No. 2,535 published in GORBV No. 41.026 of November 8, 2016, shall be renewed.

Within 90 days following the publication of the Workers' Councils Act, at least one Workers' Council must be installed for each work entity, either by renewing the existing one or choosing a new one.

All legal and regulatory provisions that conflict with the Workers' Council Act are repealed.

## Effective date

The law became effective as of its publication in the GORBV on February 6, 2018.

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## Footnote

<sup>1</sup> The value of the sanctioning tax unit has not been fixed yet by the national Executive. GORBV N ° 41.305 of December 21, 2017.

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