References


III. Labor Market Rigidities

A. Introduction

39. The labor market is governed by outdated and contradictory laws and regulations. To address these problems, the authorities have convened two tripartite meetings (comprising the government, unions, and employer organizations) in the first half of 1998 to discuss the best way to improve labor market legislation. This chapter provides background on the main weaknesses of the Bolivian labor law and regulations.

40. The current labor legislation inflates the cost of labor, creates uncertainty, and reduces the incentive for investment in the formal sector. Available evidence suggests that labor unrest does not appear to be a major problem as the number of hours lost due to industrial actions was estimated at 1.4 per worker per year for 1993–95.\(^20\) Also, high structural unemployment in the formal sector does not seem to be an issue as the official unemployment rate is reported at about 5 percent in recent years. However, underemployment is prevalent (an official estimate of the unemployment rate including underemployment is slightly below 20 percent).\(^21\)

B. The Current Labor Law and Regulations

41. The basic labor law (Ley General del Trabajo) was introduced in 1939 and its regulations (Decreto Reglamentarios) came into force in 1943. Since then, many ad hoc amendments have been added. As a result, the current legal framework for the labor market has five major areas of weaknesses.

Uncertainty

42. The basic labor legislation is supplemented, directly or indirectly, by more than 500 pieces of separate labor-related laws, and by some 2,500 relevant supreme and ministerial regulations.\(^22\) Such a large number of regulations prevents a clear understanding of the rules


\(^{21}\) Labor market statistics are weak in Bolivia, there are basic data on employment but information on wages is generally very poor. Available labor market data are shown in Tables 15–19.

\(^{22}\) Much of this reflects many years of intensive lobbying by special interests. The result is a plethora of decrees governing different groups such as office workers, journalists, aeronautical workers, and newspaper distributors.
governing labor issues and creates undue complications for regulators and market participants. The body of regulations contains contradictions in many places. For example:

- According to Regulation DS 9190, a worker once employed cannot be removed (inmovilidad laboral). However, regulation DS 21060 provides for a rescinding of labor contracts. These two regulations coexist in the labor code, although the latter is interpreted by some (but not by others) to have superseded the former.

- According to Regulation DS 1592, the calculation of severance payments should not include bonuses (aguinaldo and prima anual). However, in practice, the labor ministry has suggested that they be included.

- According to the basic law, the firing of a bank employee with more than five years of seniority can only take place after the convening of an administrative hearing while regulation DS 21060 suggests that this process is no longer necessary.

- According to Regulation DS 5051, the minimum duration of a collective work contract is a year. However, the labor ministry has issued guidelines based on a judicial ruling which shortens it to six months.

43. The lack of clarity of labor regulations is compounded by a lack of consistency in the interpretation of the labor code by case judges, law experts, and administrators. Consequently, several regulations in the labor law are either not enforced or unenforceable because regulators and the judiciary alike find it nearly impossible to apply them comprehensively and coherently. This has created mutual mistrust between workers and employers. In particular, employers are believed to hold the view that workers often benefit from sympathetic labor tribunals. At the same time, when labor conflict arises, employers see the use of labor tribunals for resolving differences as cumbersome and time consuming. Thus, the current system has created an incentive for employers to seek, to the extent possible, to minimize such potential disruption by limiting the creation of formal employment.

High hiring and separation costs and inflexibility in contracting

44. In Bolivia, the protection for workers features prominently under the existing law at the expense of employers' flexibility in hiring, contracting, and firing of workers. The bias in favor of labor protection heightens labor cost and limits employers' ability to respond rapidly to changing market conditions. Among the more noteworthy restrictions in this regard are:

\[\text{UDAPE (1997), p.11.}\]
\[\text{Ibid, p.21–23.}\]
(a) rigid work hours and mandatory, high overtime pay; (b) fairly generous annual leave and bonuses; (c) difficulty in firing and heavy separation costs; and (d) lack of flexibility in using fixed-term contracts and subcontracting.

**Work hours and overtime rates**

45. The labor code regulates work hours heavily. It designates a standard workday of 8 hours which includes a minimum rest period of 2 hours and a work week of no more than 48 hours. The law also stipulates weekly rest days to begin at 1:00 p.m. on Saturday and continuing into Sunday. Minimum overtime rates are required for work outside the standard hours. For instance, employers are required to pay an additional 100 percent over the normal hourly rate for overtime during the work week and on holidays. A 300 percent overtime rate must be paid for work on Sundays. Workers on night shifts also receive an additional 25–50 percent over the normal rate. In addition, according to labor regulations, special permission must be sought from the ministry of labor when a firm chooses to operate outside the standard work hours.

**Annual leave and bonuses**

46. The law establishes 15 days of vacation for those with 1–4 years employment, 20 days for those with 5–9 years employment, and 30 days for those with more than 10 years of seniority. Annual leave must be used as the law prohibits the carrying over of unused annual leave from one year to the next. The labor law also legislates on bonuses which on average could add up to 10–15 percent of a remuneration of a worker. Two bonuses are payable. A one-month Christmas bonus (aguinaldo) for most workers or a two-month bonus payable in May and December (prima anual) for the banking sector. A seniority bonus of up to three times the minimum wage must also be made each year.

**Firing and separation costs**

47. The cost of separation can be extremely high depending on the condition of separation and the workers' years of services. In general, the law mandates a severance payment that is equal to one-month's pay for each year of service in the case of dismissal, with no upper limit. When a firm fails to provide three-month advance notice of dismissal, another three-month severance pay must be made. For an employee with five or more years of service, a severance payment of one-month's pay for each year of service is mandatory even in the case of voluntary departure.

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26 In May 1998, a continuous eight-hour work day was introduced for a limited number of sectors including the banking sector and certain government jobs.
Fixed-term contract and subcontracting

48. Fixed-term contracts are prohibited in areas considered as parts of the normal operation of an enterprise. As a result, firms must provide new workers regular contracts without having the benefit of a trial employment period to assess a worker’s suitability for the job. At the same time, the firm and its subcontractors are held jointly responsible for all labor-related issues such as pay, working conditions, and hiring and firing decisions, even though the firm may not control its subcontractors.

Treatment of female workers

49. By singling out female workers as a group for separate treatment, for protection or otherwise, the labor law either outrightly or unwittingly provides reasons for discrimination against women in the labor market. First, women may not work more than 40 hours a week compared to a maximum work week of 48 hours for men. Second, the share of female workers in the total work force of a firm is limited to no more than 45 percent in certain types of work, which is vaguely defined as “any employment which does not need to use the labor of women in a major way.”27 Discrimination against women in the labor market may have contributed to the fact that poverty is disproportionately high in nonindigenous households headed by a female.28

50. The law mandates an in-kind payment (fuero maternal) that is equivalent to 17 minimum wages for all lactating mothers29 and a cash payment of one minimum wage at the time of the birth of the child. This is a good idea for social reasons, but can be expensive for employers when applied as a labor cost. Another regulation specifies that all enterprises with more than 50 workers must provide child-care facility for children less than one year old.

Weaknesses with respect to labor organization

51. The current legislation is vague with respect to the rights of public sector employees to form unions, and is silent on the issue of labor organization at regional and central levels. Thus, politically powerful groups such as university professors and health workers have taken advantage of their visibility to unionize, while public sector workers in other areas of work have not been able to form unions. In addition, there is little in the legislation that addresses


28This is the same for an indigenous poor household, although the chance that it is led by a female is only somewhat higher than that of being led by a male. See Psacharopoulos and Patrinos (1994), p.72–73.

29One payment per month starting from the fifth month of pregnancy and ending one year after the birth of the child.
the issue of labor organization outside of the enterprise level; thus, industrial actions organized at regional and central levels have sometimes been viewed as illegal.  

Over-intrusion by the state

52. The central government often takes an active role in the collective bargaining and negotiation process between unions and employers. It serves as a de facto arbiter of most labor conflicts, despite the presence of labor tribunals. Permission to operate factories on Sundays must be sought from the Department of Labor. Through collective bargaining agreements with the Congreso de Obreros Bolivianos (COB)—a coalition of public and private sector workers—the state sends a signal to the private sector to provide an annual salary increase that is at least equal to the amount negotiated between the state and COB.  

C. Conclusion

53. The current labor legislation is a major obstacle to modernization of the economy. Without reform, business and labor will suffer from an inefficient structure of production. Foreign investment in labor-intensive sectors is likely to be discouraged. At the same time, under present conditions, strong incentives exist for employers to offer jobs outside the legal framework to reduce labor costs, leading to the growth of informal labor market with insufficient protection for workers. Thus, it is timely that the government has begun to address the issue of labor market reform.