SALARY AND INEQUALITIES
CONCLUSIONS

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Abstract

The Comparative Labor Dossier (CLLD) in this issue 3/2018 of IUSLabor is dedicated to salary and inequalities. Aside from Spain, renowned academics and professionals from the following countries have participated in this publication: France, Italy, Portugal, Brazil, Colombia, Chile, Costa Rica, Uruguay and Canada. The following pages contain the 10 main conclusions reached in the comparative study. Nevertheless, it is highly recommended the detailed reading of the pertinent chapters to better understand the conclusions here indicated. Likewise, readers will find attached to the conclusions a summary table with the answers of the different legal regimes to each one of the questions on salary and inequalities analysed in this issue of IUSLabor.

El Comparative Labor Law Dossier (CLLD) de este número 3/2018 de IUSLabor está dedicado al salario y las desigualdades. Además de España, en esta publicación han participado académicos y profesionales de reconocido prestigio de los siguientes países: Francia, Italia, Portugal, Brasil, Chile, Colombia, Costa Rica, Uruguay y Canadá. En las siguientes páginas hemos incluido las 10 conclusiones principales que hemos alcanzado. No obstante, recomendamos encarecidamente una lectura detallada de los capítulos correspondientes para una mejor comprensión de los puntos aquí señalados. Asimismo, las conclusiones vienen acompañadas de un cuadro-resumen con las respuestas de los distintos ordenamientos jurídicos a cada una de las preguntas sobre salario y desigualdades analizadas en este número de IUSLabor.

Título: Salario y desigualdades. Conclusiones.

Keyworkds: Wage, minimum wage, seniority, productivity, complements, discrimination, wage equality, work of equal value, compensation, absorption, gender discrimination, wage transparency, equal treatment, public tender offer, wage reduction.

Palabras clave: Salario, salario mínimo, antigüedad, productividad, complementos, discriminación, igualdad salarial, trabajo de igual valor, compensación, absorción, discriminación de género, transparencia salarial, igualdad de trato, oferta pública de contratación.

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Summary

1. «Top ten» conclusions

The comparative Labor Law Dossier (CLLD) in this issue 3/2018 of IUSLabor is dedicated to the regulation of different legal regimes on salary and inequalities. It includes, therefore, several articles realised by well-known academics and professionals on the regulation on the matter in France, Italy, Portugal, Spain, Brazil, Chile, Colombia, Costa Rica, Uruguay and Canada.

The CLLD emanates from the following questions answered by the international advisors of the journal*:*

1. Does your legal system legally regulate a minimum wage?
2. Is it frequent for collective agreements to recognize seniority bonuses? And complements or bonuses related with productivity?
3. Does your legal system allow, without existing a situation of discrimination, to establish a double wage scale by collective agreement (that is, different wage for work of equal value based on the date of entry into the company)? Is it allowed for the employer, without existing a situation of discrimination and without a collective agreement, to pay different wages to different employees for work of equal value?
4. What is the effect of increases on wages introduced by law or collective agreement on workers that already perceive a higher salary? Are such wage increases compensated or absorbed?
5. What is the legal and case law treatment of wage discrimination on the grounds of sex?
6. Which measures does your legal system include to promote wage equality? Does the company have the obligation to adopt wage transparency measures (external audit, publicity of wages, etc.)?
7. What is the impact salary when calculating the compensation for termination of the employment contract? How is such compensation calculated? Briefly, what are the most frequent cases of termination of the labor contract?
8. Does the legal system establish a principle of equal treatment in wages in cases of outsourcing? And when hiring workers through Temporary Employment Agencies?
9. Is it possible to introduce a minimum wage in a public tender offer?
10. Is it possible for the company to modify (by lowering) workers' salary established in the labor contract or the collective agreement? If so, in which cases? And what are the limits?

Following, and in the same order of the above questions, the reader will find the 10 main conclusions reached on the grounds of the answers given by the different academics and professionals in matters of salary and inequalities.

1. The present study has allowed to identify diverse similarities in Europe and America concerning the existence of an interprofessional minimum wage.

Hence, in all the compared **European countries**, there is a stipulated salary at the normative level. The unique exception was found in **Italy**, where the regulation of the matter is carried out by National Collective Agreements applicable to each productive sector. Through these normative instruments, different thresholds that limit the setting of salaries in inferior amounts are established

A similar pattern was identified in **all the Latin-American countries** which took part of the study, where diverse similar features regarding the universality of the minimum wage and the recognition depending of the performance of tasks during the maximum working time were reported. In the frame of the study, the **Chilean** regulation stands out since it excludes from the scope of its application the underage and those persons older than 65.

The highest European minimum wage for 2018 was reported in **France**, where it amounts to 1498€ monthly, by contrast, 580€ per month in **Portugal**, and 736€ in **Spain** – nonetheless, it has substantially increased for 2019 up to 900€. Moreover, the study has proved useful to find an uneven pattern in **Latin America**, where the highest minimum salary is found in **Costa Rica** (442€ per month), followed by **Uruguay** and **Chile** (360€ approximately), and finally **Colombia** and **Brazil**, where the amount decrease up to 215€ per month.

Regarding the procedure of stipulating wages, **most of the analyzed legal systems** report the existence of a legal rule, of annual and general application, issued by the National Government as a result from the social dialogue with relevant actors. Again, the **Italian system** falls apart from that pattern, as mentioned, since stipulations about salary there emerge in the frame of collective bargaining processes.

Finally, in this context, some systems regulate the functioning of permanent institutions which gather the most representative organizations of workers and employers. That is the case of the *Comissão Permanente de Concertação* in **Portugal,** the *Comisión permanente de Concertación de Políticas Laborales y Salariales* in **Colombia**, the *Consejo Nacional de Salarios* in **Costa Rica** or the *Consejo Superior Tripartito* en **Uruguay**. As reported, this sort of institutions prevail in Latinamerican systems.

2. The comparative analysis has been useful to identify **different trends as regards to the recognition of salary complements linked to seniority or productivity**, by means of norms arisen from collective bargaining agreements.

First, the **complements linked to productivity** are often a matter of negotiation by collective agreements in **France**, **Italy**, **Spain** and **Portugal**, even when in the latter, this kind of provisions are hardly ever included. In this context, the **French case** stands out, as legal rules establish that productivity related complements can arise from custom, and a legal procedure is to be followed in order to cease from their payment. Other relevant provisions were encountered in the **Italian system**, where these concepts are subject to most favorable treatment in the framework of taxation and Social Security contributions.

Productivity is used to determine the recognition of supplements at the **individual** or **collective** level. As a matter of fact, most individual complements were reported in **France**, as part of remuneration packages offered at the subscription of employment contracts. In its turn, complements are often linked to the total productivity, or to the overall performance of the company in **Spain** and **Italy**.

A similar pattern of existence of **seniority based-complements** at the collective level was found in **Europe**. The most representative exception was located in the **Italian** system, where seniority complements are commonly established at the individual level.

This matter is far less uniform in **Latin America.** In **Colombia** and **Chile** were reported the existence of those complements at the collective agreement level, in **Costa Rica** are rarely stipulated those linked to seniority, while productivity is not frequently used in **Uruguay**. Finally, none of the complements (seniority nor productivity) are often negotiated, neither included in collective agreements **in Brazil**.

3. Most of the legal systems analyzed, constitutionally or legally, regulate the principles of equal salary for work of equal value and the prohibition of discrimination. Apart from this pattern, the **Italian regulation** stands out again, as it does not establish the first principle enunciated.

Based on that relation, **all the European legal systems under analysis** accept double wage scales, if and only if they are **objectively justified** and if they are not discriminatory. For instance, in the **French legal system**, hiring before or after subscription of a collective agreement, cannot legally justify wage differentiation.

Similarly, in **Latin-American legal systems** predominate the acceptability of this kind of measures, as long as an objective justification exists (**Colombia**, **Chile** and **Costa Rica**). On the other side, the **Brazilian regulation** considers wage differentiation *prima facie* discriminatory, while the matter is arguable in **Uruguay**.

Finally, recent initiatives have been reported in **Canada** to avoid wage discrimination between full-time, part-time, and temporary agency workers performing equal work

4. In the framework of the current study, participant countries have reported the case of minimum salary increments by law as the most common wage increases in practice. However, such phenomenon can emerge as well as a consequence of norms derived from collective bargaining processes, or from individual agreement, made between the parties of the employment contract.

In this context, in **most of the European countries which took part of the study,** wage increments legally or conventionally established, do not produce any effect over higher salaries.

Concepts such as *"absorption"* and "*compensation*", as independent categories, are particularly developed in the **Spanish system**, even when the **Italian** regulates the first of them. So, in the first case, these are defined as institutions with "*the same legal substance and submitted to the homogeneity of salary conditions necessity criteria in order to apply*". It exists in the case of salary increments overlap, caused by different regulatory sources and whose resolution requires the application of the most favourable norm.

On the other hand, the phenomenon depicts different sides in **Latin America**. There, the systems of **Brazil** and **Uruguay** establish the extension of increments to every worker. In **Colombia**, all salaries, even those higher than the minimum, are subject to annual increment although in different proportions, according to rules fixed by the Supreme Constitutional Tribunal. Moreover, there, several salaries are determined by using the minimum as a reference, therefore these automatically rise when the minimum increases, no matter if they are higher.

In **Canada,** as in most of European countries**, minimim wage increases** do not make any impact over higher salaries.

5. Among the countries participating of the study, **European and Latin American**, there is a **prohibition of different treatment between men and women**, as it is considered a matter of discrimination. In the framework of the study, a diverse range of

norms, which reaffirm the rule, has been identified. That is the case of the principle of equal remuneration for work the of equal value (constitutional and legal norms), a reverse burden of proof when alleged discriminatory treatment and when wage differences have been shown (**Spain**) and work-life balance measures as a form to counter the above-mentioned sort of discrimination (**Italy**).

It is interesting to specifically mention some particularities. The case of labor discrimination on grounds of gender triggers off criminal consequences in **France** or civil and administrative sanctions in **Brazil.**

Furthermore, the study has proven useful to identify, **among the European legal systems**, a lower degree of normative indeterminacy regarding the matter, since these contain more precise rules describing discriminatory behaviours. In this sense, the **French legal system** establishes a group of actions that legally justify differences in treatment between men and women or the **Italian** and the **Spanish systems** develop, through case law, a set of hypotheses in which discrimination exists. For instance, the exclusion of pregnancy and parental leaves to calculate productivity-related complements or the deductions of variable wages during parental leaves are considered discriminatory in the aforementioned legal systems.

6. In the analyzed European legal systems, with the **exception of Italy**, exist **similar measures to foster wage equality**. **Spanish**, **French** and **Portuguese** rules impose on the companies the duty of designing and implementing equality plans and the obligation to negotiate in collective bargaining processes measures related to equal treatment and opportunities between men and women. Particularly, the **Portuguese regulation** stands out as it establishes a wide group of measures, such as the submission of collective agreements to be reviewed by a specialized legal organism (*Comissão para a Igualdade no Trabalho e no Emprego*) in order to determine the existence of discriminatory, the designation of a faculty to that institution to present the case before the judiciary and calling for nullity in case of discriminatory clauses.

Concerning wage transparency measures, **the exception to the general trend is the Spanish system where no measure was found**. By contrast, the **French system** imposes the company the obligation to inform workers and candidates to cover job positions, about the existence of wage equality texts. In **Italy**, the norms oblige companies (over 100 workers) to elaborate a periodic report on paid salaries. In **Portugal**, employers must keep sex-segregated records of recruitment forms and procedures, and the responsible Ministry has to disclose annual wage statistics, including a gender perspective.

Neither measures to foster wage equality nor those related to transparency have been widely developed in the Latin American legal systems under study. Thus, related norms belong to the collective bargaining level, or to the unilateral entrepreneurial scope. The **Chilean system** falls apart from that pattern as a draft legislation is in progress, or **Uruguay**, in which all workers can obtain access to the workforce's payroll, through the "*Planilla de trabajo unificada*" or by other open means.

Finally, it has been reported in **Canada** a piece of legislation specifically addressed at regulating the subject (*Pay transparency Act)*, in which a diverse range of complementary measures is developed, such as the prohibition to employers from seeking compensation history from a job applicant, the duty of making public salary range for advertised positions, the prohibition to employers from retaliating against employees for making inquiries about their compensation or the disclosing of it to another employees.

7. In **all the analyzed countries, European and Latin American countries**, salary is used as a point of reference to calculate the compensation for termination of the labor contract. The current study has been useful to identify, in addition, other variables that usually influence the calculation: seniority and type of contract.

One of the most frequent formulas used to compensate for damages caused by the termination of the labor contract (**Spain**, **France**, **Portugal**, **Colombia**, **Costa Rica**, **Chile** and **Uruguay**), consist in the recognition of a specific number of salary days per each year of service. Hence, the amount delivered as compensation is usually directly proportional to seniority in the labor position.

Once again, this is a predominant pattern, which find several differences among the systems subject to comparison. One of the most prominent forms of compensation was found in **Brazil,** where an annual deduction is made from the labor income (a percentage of the overall wage), and then it is deposited in a public fund *(Fondo de Garantía por Tiempo de Servicios).* The compensation for termination is equal to the 40% of the worker's individual balance.

8. Although there is no principle of equal treatment in **Italy**, **Spain** and **Portugal** for **the case of outsourcing,** it is established for **Temporary Employment Agencies**. Only the **French system** includes the above-mentioned equality principle, in relation to permanent staff, in both cases.

As a matter of fact, in the **Spanish labor market** is reported the increase of multiservice companies. These are companies created to perform services in favor of third parties, considerably similar to Temporary Employment Services, but out of that scope of their regulation. The current legal discussion regarding these types of companies has to do with the applicability of rules regarding wage equality to employers working for them.

Regarding **Latin America**, there is a legal vacuum in the **Colombian** and **Costa Rican** legal systems in both cases, but **Brazil**, **Chile** and **Uruguay** report the duty of protecting equality for employers hired by Temporary Employment Agencies.

Neither in Canada (Ontario) was found a regulation of equal pay for outsourced work, or for work performed by those hired by temporary employment agencies.

9. Except for the **French system**, where the matter is not regulated, **most European legal systems allow the possibility of including provision related to minimum wage in public tender offers**. The object of this sort of stipulations, according to the reports, consist on establishing a minim set of wage standards, compatible with those where the work (hired by administrative means) is performed (**Italy** and **Spain**) or, in general terms, the protection of international and national labor standards (**Portugal**).

In regard to the consequences derived from non-fulfillment of public tender offers terms, the **Italian legal system** establishes the exclusion of the process, or the disqualification for taking part in future calls, up to five years.

In turn, in **Latin American countries** predominates the absence or related rules. Just in **Chile**, companies that recognize higher salaries are awarded additional points in the related process. In that system, the implementation of those clauses has emerged as a consequence of agreements made at the collective bargain level.

In **Canada** exists a consolidated practice on the matter, and it is developed by local legislation instruments (e.g. *Government contract wages Act* adopted by the Government of Ontario). However, not all the jurisdictions count on that kind of statutes

10. Modifications (reduction) of salaries established by individual or collective agreement are possible, according to all the analyzed systems (**Europe** and **Latin America**). However, such adjustments demand individual or collective agreement, and therefore, the faculty of unilaterally carrying out wage reductions is restricted, with the only exception found in **Spain.**

In some cases, regulations justify the aforementioned modifications. That is the case of the return of the worker to the position after occupying a temporary post, the reduction of working time, the suspension of the contract or the change of position (**Portugal**) or the concurrence of economic, technic, production or organizational causes (**Spain**). The matter is broadly developed in the latter legal system, since the phenomenon is regulated by two different procedures: the substantial modification of the labor contract –for wage modifications stipulated in the labor contract or by the company's unilateral decision– or the procedure to not apply the collective agreement.

Regarding this issue in **Latin American countries**, the prohibition of unilateral modification is adopted under different labels such as "*irreductibility*" (**Brazil** and **Uruguay**), "*intangibility*" (**Uruguay**), the limits related to *ius variandi* (**Colombia**) or the legal prohibition of "*no reformation in pejus*" (**Chile**).

Finally**,** the **Costa Rican** regulation impose specific consequences in case of unilateral wage modifications, as the valid extinction of the contract by worker's decision or the employer's obligation to compensate damages derived from such decision.

2. «Top ten» conclusiones

El Comparative Labor Law Dossier (CLLD) de este número 3/2018 de IUSLabor ha estado dedicado a la regulación que hacen distintos ordenamientos jurídicos del salario y las desigualdades. Incorpora, por tanto, una serie de artículos realizados por prestigiosos académicos y profesionales sobre la normatividad existente en, España, Francia, Italia, Portugal, , Brasil, Chile, Colombia, Costa Rica, Uruguay y Canadá.

Para realizar este análisis comparativo, el CLLD se ha basado en las respuestas que los colaboradores internacionales de la revista han dado a las siguientes preguntas:

1. ¿Existe un salario mínimo interprofesional estipulado a nivel normativo?
2. ¿Es habitual que los convenios colectivos regulen un "plus de antigüedad"? ¿Y complementos vinculados a la productividad?
3. ¿Se permite que, sin que haya una situación de discriminación, el convenio colectivo establezca una doble escala salarial (es decir, un salario diferente por un trabajo de igual valor en función de la fecha de ingreso en la empresa)? ¿Se permite que, sin que haya una situación de discriminación y sin que el convenio colectivo diga nada al respecto, un empresario pueda pagar diferente a dos trabajadores por un trabajo de igual valor?
4. ¿Cuál es el efecto de incrementos salariales introducidos por ley o convenio colectivo sobre trabajadores que perciben un salario superior? ¿Estos incrementos salariales son compensados o absorbidos?
5. ¿Qué tratamiento legal y jurisprudencial recibe la discriminación por razón de sexo en materia salarial?
6. ¿Qué medidas de fomento de la igualdad retributiva se prevén en su ordenamiento jurídico? En concreto, ¿existe en su país la obligación empresarial de adoptar medidas de transparencia salarial (auditoria externa, publicación salarios, etc.)?
7. ¿Qué impacto tiene el salario en la determinación de la indemnización por finalización del contrato de trabajo? ¿Cómo se calcula dicha indemnización y, de manera breve, cuáles son los supuestos de extinción más habituales?
8. ¿Existe un principio de igualdad de trato en materia retributiva en la externalización productiva? ¿Y en la contratación de trabajadores a través de una Empresa de Trabajo Temporal?
9. ¿Es posible introducir un salario mínimo en una oferta pública de contratación?
10. ¿Es posible que la empresa modifique (disminuyendo) el salario previsto en contrato de trabajo y/o convenio colectivo? ¿En qué casos y respetando qué límites?

A continuación, el lector encontrará, siguiendo el orden de las preguntas anteriores, las 10 conclusiones principales alcanzadas en base a las respuestas de los diferentes académicos y profesionales en materia de salario y desigualades.

1. El presente estudio ha permitido identificar ciertas **similitudes en Europa y América** respecto a la existencia de un salario mínimo legal y su carácter interprofesional

Así, en **todos los países europeos** sometidos a comparación se encuentra regulado dicho salario a nivel normativo. La **única excepción** fue hallada en **Italia**, donde la regulación de la cuestión se efectúa mediante Acuerdos Colectivos de alcance nacional aplicables en cada sector productivo. A través de dichos instrumentos normativos se establecen umbrales que impiden la fijación de salarios en cantidades inferiores.

Un patrón similar fue encontrado en **todos los países latinoamericanos** participantes del estudio**,** en donde se reportaron características más o menos similares en relación con la universalidad del salario mínimo, y su reconocimiento dependiente de la ejecución de labores durante la jornada máxima legal. Dentro del estudio se puede destacar la regulación **chilena**, que excluye del ámbito de aplicación normativa a las personas menores de 18 años de edad y a los mayores de 65.

Por su parte, el **salario mínimo europeo más alto**, para el año 2018, fue reportado en **Francia** en una suma de 1498€ mensuales, en oposición a los 580€ mensuales garantizados por el sistema normativo **Portugués** y los 736€ del **sistema Español** – nótese, no obstante, que el salario mínimo en España para el 2019 ha incrementado sustancialmente hasta 900€.. A su vez, el estudio ha permitido encontrar un patrón irregular en **Latinoamérica**, donde, el ingreso mínimo más alto se encuentra en **Costa Rica,** equivalente a 442€ mensuales, seguido de **Uruguay y Chile** con 360€ aproximadamente y, finalmente, **Colombia y Brasil**, donde la cantidad desciende hasta 215€ mensuales.

En cuanto al procedimiento de fijación, **la gran mayoría de los sistemas legales** estudiados refieren la existencia de una norma legal de aplicación general, de vigencia anual, expedida por el Gobierno nacional, fruto del dialogo y consulta con los actores sociales involucrados. De nuevo, el **sistema italiano** se aparta de esa tendencia, dado que, como se ha mencionado, la fijación se efectúa mediante negociación colectiva,.

Finalmente, en ese contexto, destaca la existencia de instituciones que agrupan, en forma permanente a las organizaciones más representativas de trabajadores y empleadores para ese efecto específico. Es el caso de la *Comissão Permanente de Concertação* en **Portugal,** la *Comisión permanente de Concertación de Políticas*

Laborales y Salariales en **Colombia**, el *Consejo Nacional de Salarios* en **Costa Rica**, o el *Consejo Superior Tripartito* en **Uruguay.** Como se puede observar, la existencia de este tipo de instituciones es predominante en Latinoamérica.

2. El análisis comparativo ha permitido identificar **tendencias diversas respecto al reconocimiento de complementos salariales asociados a la antigüedad o a la productividad**, mediante normas que emergen por efectos de la negociación colectiva.

En primer lugar, los **complementos asociados a la productividad** son frecuentemente objeto de negociación y estipulación en convenios colectivos celebrados en **España**, **Francia**, **Italia** y **Portugal**, aun cuando en éste último país se presentan con escaza frecuencia. En este ámbito específico destacan las reglas establecidas en el ordenamiento **francés**, donde el derecho al reconocimiento puede surgir de la *costumbre* y la cesación en el mismo exige la realización de un procedimiento específico por parte del empleador; o aquellas establecidas en el sistema **italiano**, donde se establece un tratamiento más favorable de las sumas que se reciben por ese concepto para efectos de tributación y de contribuciones a la seguridad social.

Ahora, la productividad sirve para determinar el reconocimiento de suplementos asociados a nivel **individual** o **colectivo.** Como una cuestión fáctica, en **Francia** se reporta la existencia más frecuente de dichos beneficios en el nivel individual, dentro de paquetes de remuneración ofrecidos a los trabajadores en el marco de los respectivos contratos de trabajo. Por su parte en **España** e **Italia**, los complementos existentes se asocian con mayor frecuencia a la productividad total o desempeño de la respectiva unidad económica.

Así mismo, el estudio ha permitido identificar un patrón similar respecto al reconocimiento de **beneficios asociados a la antigüedad** en el marco de los convenios colectivos, del cual solamente se sustrae el ordenamiento **italiano,** donde dichos derechos se encuentran en el nivel individual.

Esta cuestión resulta mucho menos uniforme en **Latinoamérica.** En **Colombia** y **Chile** se reporta el reconocimiento frecuente de ambos beneficios a nivel de convenio colectivo, en **Costa Rica** resulta poco habitual el establecimiento de aquellos asociados a la antigüedad, mientras que en **Uruguay** lo es en el caso de la productividad. Finalmente, en **Brasil**, los mencionados beneficios no son objeto habitual de negociación ni de acuerdo colectivo.

3. La **gran mayoría de sistemas legales analizados** contemplan, bien en el nivel constitucional o legal, los principios de **igual retribución por trabajo de igual valor** y

de **prohibición de discriminación**. Al margen de esta tendencia, destaca nuevamente el **sistema italiano**, donde no existe el principio de igual remuneración.

De dicha correlación surge, **en todos los sistemas europeos que tomaron parte del estudio**, la admisibilidad de dobles escalas salariales, si y solo si, aquellas encuentran **justificación objetiva** y si **aquellas no son constitutivas de discriminación**. Por ejemplo, en el sistema francés, la contratación previa o posterior a la entrada en vigencia de un acuerdo colectivo, no puede justificar válidamente la existencia de diferencias de trato en materia salarial.

Similarmente, en los **ordenamientos Latinoamericanos** predomina la aceptabilidad de este tipo de medidas, siempre que exista una justificación objetiva (**Colombia, Chile y Costa Rica)**. Sin embargo, en el **ordenamiento brasileño**, aquellas se consideran discriminatorias *prima facie*, mientras que en **Uruguay** la legalidad de éstas resulta abiertamente discutible.

Finalmente, en **Canadá** se ha reportado la existencia de iniciativas recientes, para evitar la discriminación salarial entre trabajadores a tiempo completo, trabajadores a tiempo parcial, y aquellos vinculados mediante Agencias de Empleo Temporal, cuando desempeñan las mismas labores.

4. En el marco del presente estudio, los países participantes han reportado el incremento del salario mínimo, que se efectúa con fundamento en la ley, como el de mayor ocurrencia en la práctica. Sin embargo, no se descarta la existencia del fenómeno con fundamento en normas derivadas de la negoción colectiva, o del acuerdo individual celebrado entre las partes del contrato de trabajo. En este contexto, **en la mayoría de los países europeos** participantes, **los incrementos salariales producidos por vía legal o convencional no producen efectos en los salarios superiores**.

Los conceptos de "*absorción*" y "*compensación*", como entidades propias, encuentran particular desarrollo en el **sistema español**, aun cuando el **italiano** también hace mención al primero de ellos. Así, en el primer caso, se definen como instituciones "*con el mismo sustrato legal, sometidas al criterio de homogeneidad como criterio necesario de aplicación",* existentes en el supuesto de superposición de incrementos salariales establecidos en diversas fuentes regulatorias y, cuya solución impone la aplicación de la norma más *favorable.*

Por su parte, en **Latinoamérica**, el fenómeno presenta diversos matices. Así, en los ordenamientos de **Brasil** y **Uruguay**, se establece la aplicabilidad de los incrementos salariales a todos los trabajadores. Por su parte en **Colombia**, todos los salarios,

inclusive aquellos superiores al mínimo, deben ser objeto de reajuste anual, aun cuando en cantidades diferentes, según criterios formulados por el Tribunal Constitucional. Ahora bien, como en dicho sistema se pactan, con cierta frecuencia, salarios con referencia al mínimo legal, el respectivo incremento anual produce impacto en éstos aun cuando se trate de cantidades superiores.

En **Canadá, al igual que en la tendencia mayoritaria de Europa, el aumento del salario mínimo** no produce impacto en los salarios superiores.

5. Dentro de todos los países que formaron parte del estudio, **americanos y europeos**, se establece la **prohibición de trato salarial diferente entre hombres y mujeres**, al considerar la materia como un asunto que pertenece al ámbito de la discriminación. En este contexto, se han identifican otro tipo de normas que refuerzan dicho imperativo, como la consagración constitucional o legal del principio de igual remuneración por trabajo de igual valor, la imposición de la carga probatoria en el empleador en el evento en que se prueba el trato salarial desigual entre hombres y mujeres (**España**) o la creación y promoción de medidas de conciliación de la vida familiar y laboral como forma de contrarrestar la precitada forma de discriminación (**Italia**).

Algunas particularidades merecen ser mencionadas en forma específica. Así, el supuesto de discriminación laboral basada en el género genera la atribución de consecuencias penales en **Francia** o sanciones del orden civil y administrativo en **Brasil.**

De otra parte, el estudio ha permitido identificar, **dentro de los ordenamientos europeos**, un menor grado de indeterminación normativa en la materia, como consecuencia de la existencia de reglas, con mayor nivel de precisión, que describen aquellas conductas empresariales consideradas de carácter o naturaleza discriminatoria. Así, el **ordenamiento francés** presenta un catálogo de acciones que justifican válidamente el trato salarial diferenciado entre hombres y mujeres, o el **italiano** y **español**, definen, por vía jurisprudencial, ciertos supuestos que configuran supuestos de discriminación. Por ejemplo, la exclusión del periodo de embarazo y permisos parentales para efectos del cálculo de complementos salariales relacionados con la productividad o el descuento del salario variable durante el disfrute de permisos parentales resultan discriminatorios en los dos últimos ordenamientos señalados respectivamente.

6. En los **ordenamientos europeos analizados**, **a excepción de Italia**, se establecen **medidas similares de fomento de la igualdad en materia retributiva**. Así, las normas de **España**, **Francia** y **Portugal** imponen a las empresas la obligación de diseñar e implementar planes de igualdad; a los sujetos intervinientes en los procesos negociación

colectiva, el deber de negociar la adopción de medidas relacionadas. Particularmente, y con carácter sobresaliente, la regulación de **Portugal** establece un amplio conjunto de medidas, como la obligación de someter los convenios colectivos a revisión por parte de un organismo público especializado (*Comissão para a Igualdade no Trabalho e no Emprego*) a efectos de determinar la existencia de cláusulas discriminatorias; la atribución de la facultad, a dicha institución, para acudir ante el órgano jurisdiccional competente a efectos de obtener la declaración de nulidad de las clausulas violatorias del principio .

En materia de transparencia salarial, **la excepción a la tendencia general europea se encuentra en el sistema español, donde no se reportan medidas** en este sentido. En contraste, el sistema **francés** impone la obligación empresarial de informar, a trabajadores y candidatos, sobre la existencia de textos relativos a la igualdad salarial; en **Italia**, la Ley obliga a las empresas con más de 100 trabajadores a efectuar un reporte periódico sobre los salarios pagados; o, en **Portugal**, los empleadores están obligados a conservar la documentación (con información disgregada por sexos) sobre los procesos de reclutamiento, y el Ministerio encargado de asuntos del trabajo, está obligado a divulgar estadísticas salariales anuales, incluyendo la respectiva variable de género.

Por su parte, **ni las medidas de fomento a la igualdad retributiva, ni las de transparencia salarial, han sido desarrolladas con amplitud en los ordenamientos latinoamericanos estudiados**. Así, las normas o derechos que subsisten en este ámbito pertenecen a la negociación colectiva o al reconocimiento empresarial unilateral. De esta tendencia se aparta el **sistema chileno**, donde actualmente cursa un proyecto de legislación en la materia, o el **uruguayo**, que reconoce el derecho de los trabajadores a conocer los salarios que se pagan a toda la plantilla, contenidos en la *"Planilla de Trabajo Unificada"* o divulgados a través de otros medios.

Finalmente, en **Canadá** se reporta la existencia de legislación específicamente dedicada a la cuestión (*Pay transparency Act)*, en la cual se desarrollan diversas medidas complementarias a las mencionadas, como la prohibición de consultar el historial salarial del aplicante a un puesto de trabajo, la publicación del rango salarial ofrecido para las vacantes ofertadas, o la prohibición al empleador de sancionar a los trabajadores que realizan investigaciones sobre el salario devengado o que revelan el valor de su remuneración.

7. En **todos los países estudiados, tanto en Europa como en América Latina, el salario** es utilizado como punto de referencia para calcular el valor de la indemnización que surge como consecuencia de la finalización del contrato de trabajo. El presente estudio ha permitido identificar, además, otras variables que influyen, con frecuencia,

en el cálculo de este concepto: el **tiempo de servicios** y el tipo o **modalidad de contrato de trabajo**.

Ahora, una de las técnicas utilizadas con mayor frecuencia para el resarcimiento o compensación de los daños derivados de la extinción del contrato de trabajo (**España**, **Francia**, **Portugal**, **Colombia**, **Costa Rica**, **Chile** y **Uruguay**) apunta al **reconocimiento de un número de días de remuneración por cada año de servicios**. Así, el valor de dicha indemnización detenta, con frecuencia, una relación de proporcionalidad directa con la antigüedad en el puesto de trabajo.

Se reitera, se trata de un patrón predominante, que no aplica a particularidades específicas existentes en varios de los casos sometidos a comparación. Una de las formas indemnizatorias más sobresalientes, debido a las diferencias en relación con las demás que integran el conjunto, se encuentra en **Brasil**, donde se establece una deducción anual porcentual sobre el ingreso del trabajador, la cual se deposita en un Fondo público (Fondo de Garantía por Tiempo de Servicios). Así, la indemnización por despido equivale al 40% de las sumas depositadas en la cuenta de cada trabajador.

8. En **España**, **Italia** y **Portugal** no existe un principio de igualdad de trato en materia retributiva para el caso de la **externalización productiva**, aunque el mismo **si se encuentra contemplado** en las regulaciones sobre **Empresas de Trabajo Temporal**. Así, **solamente el ordenamiento francés** garantiza la precitada igualdad salarial, con respecto a la plantilla de trabajadores permanentes de una empresa, en los dos eventos.

Como una cuestión de hecho, sobresale en el **caso español**, la proliferación de *empresas multiservicios*. Se trata de empresas creadas con el fin de prestar servicios permanentes a terceros, que ostentan similitudes significativas con las Empresas de Trabajo Temporal, pero que escapan al ámbito de regulación de aquellas. El debate actual sobre la cuestión dentro dicho ordenamiento radica pues en la inaplicabilidad de las normas sobre igualdad en materia retributiva a los trabajadores que prestan servicios a través de aquellas.

En lo que respecta a **Latinoamérica**, existe un vacío en los ordenamientos de **Colombia** y **Costa Rica** para ambos supuestos, mientras que en **Brasil**, **Chile** y **Uruguay** reportan la obligación de proteger la igualdad en el caso de empleados contratados a través de Empresas de Trabajo Temporal.

En **Canadá** tampoco existen regulaciones con respecto a la igualdad salarial entre trabajadores permanentes y aquellos contratados externamente, o por intermedio de Empresas de Servicios Temporales.

9. Salvo **el ordenamiento francés**, donde la cuestión carece de regulación, **todos los demás sistemas legales europeos analizados contemplan la posibilidad de incluir provisiones sobre salario mínimo, en ofertas públicas de contratación**. El objeto de este tipo de estipulaciones, conforme a los reportes recolectados, consiste en garantizar la satisfacción de ciertos umbrales mínimos de remuneración, compatibles con aquellos existentes en el sector en donde la actividad contratada por vía administrativa es ejecutada (**España** e **Italia**) o, en términos generales, la protección de estándares laborales nacionales e internacionales (**Portugal**).

Con respecto a las consecuencias relativas a la inobservancia de los umbrales definidos en las ofertas públicas de contratación para los actores participantes, el **ordenamiento italiano** contempla exclusión en la participación del proceso, o la inhabilitación para participar en convocatorias futuras, hasta por cinco años.

Por su parte, en **Latinoamérica** predomina la ausencia de provisiones relacionadas. Tan solo en **Chile** se estimula, mediante el reconocimiento de puntuación adicional en el marco de procesos licitatorios, aquellas compañías que reconocen remuneraciones superiores a sus trabajadores. Cabe resaltar que, además, en dicho sistema, la inclusión de dichas cláusulas se viene efectuando como consecuencia de acuerdos alcanzados en el marco de procesos de negociación colectiva.

En **Canadá** se ha reportado una práctica consolidada sobre la materia, que se expresa en instrumentos de legislación local (e.g. *Government contract wages Act* adoptado por el Gobierno de Ontario). Sin embargo, no todas las jurisdicciones cuentan con este tipo de Estatutos

10. La **modificación (disminución) de los salarios establecidos mediante acuerdo individual o colectivo, es posible en todos los casos (Europa y Latinoamérica)**, por la misma vía, es decir, mediante la celebración de acuerdo con el trabajador o con la respectiva organización representativa. Lo anterior excluye, *prima facie*, la potestad empresarial de reducir unilateralmente el salario del trabajador, con la excepción del **ordenamiento jurídico español**.

En algunos casos se reportan regulaciones que justifican dichas modificaciones, como el regreso del trabajador al puesto de trabajo después de ocupar una posición temporal, la reducción de la jornada de trabajo, la suspensión en la ejecución de labores o el cambio de puesto de trabajo (**Portugal**) o la concurrencia de causas económicas, técnicas, productivas u organizacionales (**España**). Adicionalmente, la cuestión ofrece un amplio desarrollo en las normas del **sistema español**, donde se regulan los fenómenos a través

de dos procedimientos distintos, a saber: la modificación sustancial de las condiciones laborales para la modificación del salario estipulado en contrato de trabajo que, como se ha apuntado, permite su modificación por decisión unilateral de la empresa o el procedimiento de inaplicación del convenio colectivo.

En lo que respecta al estado de la cuestión en los **países de Centro y Sudamérica**, la prohibición de modificación unilateral se adopta bajo diferentes conceptos como la "*irreductibilidad*" (**Brasil** y **Uruguay**), *intangibilidad* (**Uruguay**), los límites implícitos al *ius variandi* (**Colombia**) o la prohibición legal de "*No reformatio in peius*" (**Chile**). Finalmente, el ordenamiento **costarricense** impone consecuencias específicas en caso de modificaciones salariales unilaterales, como la extinción valida del contrato de trabajo por decisión del trabajador, o la compensación de los daños originados en dicha decisión a cargo del empleador.

3. Summary table

3.1. Europe

	France	Italy	Portugal	Spain
1. Does your legal system legally regulate a minimum wage?	Yes. Applicable to all sectors and economic activities) 1498€ per month (reduction for underage workers) Benefits in kind must be taken into account	No National collective agreements are made in each productive sector Collective agreements are to be respected by all the employers operating in the concerned sector (judicial criteria) Contractual clauses which contain lower salaries are considered null.	Yes. Applicable to all employees 735.9€ per month (24.53€ per day) Set by law, previous consultation with social actors A higher minimum wage at the company or sector level can be collectively agreed	Yes. Applicable to all employees Less than 580€ per month (14 monthly payments) Set by law, previous consultation with *"Comitee for social concertation"*
2. Is it frequent for collective agreements to recognize seniority bonuses? And complements or bonuses related with	Yes: Seniority and productivity Collective agreements exist at company or branch level. Company agreements	Seniority: No Rewards for seniority are delivered at the individual level Productivity: Yes. Related complements are subject to more	Yes: Seniority and productivity. These are determined regarding: - Employees' personal conditions - Characteristics of the	Seniority: Yes Productivity: Hardly ever

productivity?	prevail over branches' Productivity complements. - Customary and mandatory practice (if employers begin paying for it, a procedure will have to be started to stop such payment) - Usually part of remuneration packages (contract level)	favorable taxation and social security treatment.	workplace - Results and economic situation of the company Previous legislation established negotiation of seniority bonuses as mandatory. Currently, is estimated that 60% of collective agreements contain provisions on seniority bonuses, 30% bonuses related to quantity or quality of work, and 14% bonuses linked to the situation and results of the company. It is reported a recent trend to use double salary scales and substitution of seniority complements for others related to personal achievements and productivity.	
3. Does your legal system allow, without existing a situation of discrimination, to establish a	Yes. If objectively justified Prohibition of	Yes. General agreement on inapplicability of the principle of equal pay for work of equal value Employers can pay	Yes. By case law criteria	Yes

double wage scale by collective agreement (that is, different wage for work of equal value based on the date of entry into the company)? Is it allowed for the employer, without existing a situation of discrimination and without a collective agreement, to pay different wages to different employees for work of equal value?	discrimination as a matter of interpretation. Hiring before or after entry into force of a collective agreement cannot justify unequal wage treatment. Case law on double salary scale related to nationality.	different wages for work of equal value, as long as no factor of discrimination exist.	Prohibition of discrimination and equality principles are constitutionally afforded. Certain requirements (related to the content of the principles) must be fulfilled: - Comparison between comparable situations - Objective and reasonable justifications. - Approval of a proportionality test. - Recognition of a compensation to the affected to make the measure compatible with the Constitution - Wage differences are to be transitory. Progressive extinction of the measure	Prohibition of discrimination as a matter of interpretation. Principle of equal salary for work of equal value Awarding benefits attached to seniority is allowed, if objectively justified
4. What is the effect of increases on wages introduced by law or collective	Increases do not make direct impact on employees earning higher wages.	A minimum wage increase is usually absorbed in the worker's higher salary, unless a collective agreement or contract provision establishes	Compensation and absorption are considered to be similar phenomenon. If two legal sources	Increases (normative level, collective agreement) do not make direct impact

agreement on workers that already perceive a higher salary? Are such wage increases compensated or absorbed?	Increases depends on contract terms	different consequences. Absorption can be excluded if proved that extrapayments reward merits or qualities in the tasks performed	establish a different increase, the most favourable will be applied to the worker. - *"Homogeneity"* is required for compensation or absorption. Therefore, salary concepts (compensated and compensating) must belong to the same group of supplements. - *Compensation*. If collective agreement increases the wage and it exceeds the amount already received by the worker, just the higher payment will have to be applied, not in the integrity but the difference to reach the new superior limit - *Compensation* and *absorption* can be applied to heterogeneous salary concepts according to case law	on employees already earning higher wages.

5. What is the legal and case law treatment of wage discrimination on the grounds of sex?	Prohibition, as a matter of discrimination. Gender discrimination is sanctioned by criminal law Specific criteria on which different treatment may be based: - Title, diploma or professional experience - Responsibility - Physical or mental stress Prohibition of discrimination does not apply when worker's sex constitute a determining factor in the employment	Prohibition, as a matter of discrimination (Equal opportunities code). Constitutional provision on work-life balance in favor of women Legal duty of applying common criteria for men and women in wage professional classification systems. Judicial definition of the principle of equal treatment scope (e.g. not considering absences due to pregnancy, puerperium, parental leaves to calculate bonuses is discriminatory)	Prohibition, as a matter of discrimination Legal duty of paying the same wage for work of equal value Prohibition of direct and indirect gender discrimination. Once a difference in salary is proven, the burden of proof is reversed. Specific circumstances which constitute discrimination have been described by jurisprudence	Prohibition, as a matter of discrimination Specific rules applicable to the matter: -Prohibition to set different wages based on the exercise of maternity and paternity rights - Restrictions on types of remuneration to men or women (collectively agreed or set by the employer) automatically applied to employees of both sex -Equal pay principle apply to remuneration and other benefits (as a matter of interpretation). -Employees must indicate the worker(s) in relation to whom they consider to be

				discriminated against
6. Which measures does your legal system include to promote wage equality? Does the company have the obligation to adopt wage transparency measures (external audit, publicity of wages, etc.)?	- The employer has to inform employees of texts relating to equal payment - Reduction of gender wage gaps must be collectively bargained, at least once every 4 years. - Plans also are to be carried out to address the matter. - Financial penalties may be imposed in case of unfulfillment.	-Companies > 100 workers must report wages paid (at least every two years)	- All the parties of collective agreements have the duty of negotiate measures on promotion of equality of treatment and opportunity - Legal duty of creating equality plan in companies > 250 workers - Positive action measures in favor of women inclusion, in collective agreements No measures are established concerning transparency.	See answer question number 5 - Wage equality is a mandatory topic of collective agreements - Collective agreements are subject to examination by a public Commission to check discriminatory clauses. If the case, the Commission can call for modifications in the agreement - Public sector entitites and others must draw up equality plans -Employers must keep sex-segregated records of recruitment forms and procedures - Employers hold the burden of

				proof in relation to transparency wage policies -Official statistics and indicators of gender remuneration are annually issued -Employees or unions can request a written opinion of the *Comission for equality in labor and employment* - CITE, on the existence of wage discrimination on grounds of sex. The concept delivered is binding -Courts must notify CITE of convictions of sex-based wage discrimination
7. What is the impact salary when calculating the compensation for	No matter the cause of the extinction, workers are entitled to compensation.	No matter the cause of the extinction, workers are entitled to compensation. Salary is used to calculate it.	Salary and time of services are taken into account to calculate compensation.	Base salary and seniority payments are taken into account to calculate

termination of the employment contract? How is such compensation calculated? Briefly, what are the most frequent cases of termination of the labor contract?	Salary is used to calculate it 1/4 of the monthly salary per year below 10 years of seniority must be taken into account, and 1/3 for years beyond 10 years of seniority Severance payment is limited Main cause of extinction in the country is dismissal. A considerable number of conventional breaches has been reported in 2018.	An annual deduction is made from the wage (13.5%) and paid to the worker along with indexation at the extinction (*trattamento di fine rapport*) Compensation depends on the contract - *Fixed-term contract*. Wage for the time remaining to the expiry date - *Open ended contract* (from march 2015 on). Variable amounts depending on: - The kind of infringement - Seniority - Company size - Partie's behaviour	Compensation is calculated depending on the contract: - *Collective dismissal*: 20 days per year of services. Maximum: 12 monthly payments - *Fixed-term contract*. 12 days of salary per year of services - *Disciplinary* dismissal. No compensation *Unfair dismissal*. 33 days of salary per year of service. Maximum: 24 monthly payments	compensation. Compensation is calculated depending on the cause of extinction: - *Unlawful dismissal*: from 15 to 45 days of basic salary and seniority awards for each year of full services (no less than 3 months) - *Collective dismissal* or *extinction of the work post*: 12 days of base salary and seniority payments per each year of full service *Fixed* or *unfixed term.* 18 days of base salary and seniority payments per each year of

				full service (first 3 years of services, 12 days for the following years)
8. Does the legal system establish a principle of equal treatment in wages in cases of outsourcing? And when hiring workers through Temporary Employment Agencies?	Yes (both of them) In these cases, salaries are set having as a landmark, permanent workers' salaries.	Not in the case of outsourcing. Yes for Temporary Employment Agencies (pursuant to EU sources). - Equal treatment is broaden out to social and welfare services	Not in the case of outsourcing. Yes for Temporary Employment Agencies Outsourcing is a predominant form of production externalization. *Multiservices companies - MSC.* Companies which render services with permanent character to third parties. Controversy over application of TEA legislation to MSC.	Not in the case of outsourcing. Yes for Temporary Employment Agencies. - Employees are entitled to the higher salary between different collective agreements (Temporary employment agency-user enterprise) - Temporary workers are entitled to rights recognized in the user enterprise collective agreement, even if not affiliated to unions -

9. Is it possible to introduce a minimum wage in a public tender offer?	No regulated	Yes Legal duty of enforcing labour conditions not inferior than those applicable in the sector and zone. Non-compliance may trigger the exclusion of the process. In case of serious infringement, the exclusion may last up to five years Rules to prevent social dumping in this field. - Companies which does not comply with minimum salary levels must be excluded	Yes Tender specifications have to include the winning enterprise´s duty of fulfilling the wage conditions pursuant to the applicable sector collective agreement. Further development in the public tender offer processes at the level of cities.	Yes, under EU law (*Regiopost case*) Contracting authorities must afford minimum international and national labor standards.
10. Is it possible for the company to modify (by lowering) workers' salary established in the labor contract or the collective agreement? If so, in which cases? And what are the limits?	No. Remuneration can only be reduced by agreeing the subject with the worker. Clauses enabling employers to unilaterally make wage reduction are null. The payment of a lower salary and the continuous performance of the work does not amount to	Yes. When individually set, by a new individual agreement.	Yes, by two procedures. Each possesses different features: a) *Substantial modification of working conditions* (individual or collective; no agreement can lead to unilateral modification) b) *Non-application of the collective* bargaining (collective; no	Yes. Specific circumstances: - Returning to a position after a temporary work position modificati on - Temporary reduction of working time, or suspension due to business crisis

	worker's consent on the new remuneration.		agreement lead to arbitration). The causes of the procedure may be economic, technic, productive or organizational Each procedure has different features	- Change to part-time work or to inferior job category

3.2. Latin America

	Brazil	Chile	Colombia	Costa Rica	Uruguay
1. Does your legal system legally regulate a minimum wage?	Yes. (applicable to all sectors and economic activities). Set by law 218,01€ for 2018 Applicable to all sector and economic activities Set by law.	Yes (applicable to all sectors and economic activities in the case, if: 45 hours in a week are worked From 18 to 65 years old 362€ for 2018	Yes (applicable to all sectors and economic activities). Set by law 216,33€ for 2018 Applicable to all sector and economic activities Set through social	Yes From 442€ on for 2018 Variable amounts. Depending on different variables a) Economic activity, b) Categories of workers (*non-qualified, demi-qualified, qualified, specialized*) c) Worker's level of education d) Specific jobs Set by national decree. Previous social	Yes (applicable to all sectors and economic activities). 361€ for 2018

	Collective agreements or a law may set salaries for specific professional categories higher than minimum wage		dialogue, or by national decree if no agreement is made.	dialogue.	
2. Is it frequent for collective agreements to recognize seniority bonuses? And complements or bonuses related with productivity?	Neither of them Complements are recognized, but different from wages. Enforcement by means of collective agreement	Yes Collective agreements exclusively applied at the company level. Productivity: Yes, mining sector.	Yes. Usually, tenure required longer than 5 years. In some cases, employers unilaterally recognize complements or bonuses in order to foster the development of human capital. Benefits, bonus and complements differ from salary	Seniority: Hardly ever (except in the public sector) Productivity: frequently recognized. Unilaterally fixed	Seniority: yes. Productivity: Hardly ever.
3. Does your legal system allow, without	No	Yes. If objectively justified	Yes.	Yes. If objectively justified	No. Lawfulness of double wage scale is arguable

existing a situation of discrimination, to establish a double wage scale by collective agreement (that is, different wage for work of equal value based on the date of entry into the company)? Is it allowed for the employer, without existing a situation of discrimination and without a collective agreement, to pay different wages to different employees for work of equal value?	Double wage scales are considered discriminatory. Principle of equal salary for work of equal value	Seniority is not included among those factors which validly justify different wage treatment. However, it is universally accepted (and often used) as a valid criteria of differentiation.	Awarding benefits different from salary (attached to seniority) is allowed, if objectively justified		Wage differentiation is allowed if not based on discriminatory reasons
4. What is the effect of increases	No compensation neither absorption	No legal obligation of increasing wages higher	Minimum wage is increased every year	Regulated by company policies or collective	Wage increases are to be applied to

on wages introduced by law or collective agreement on workers that already perceive a higher salary? Are such wage increases compensated or absorbed?	Wage increases are to be applied to all workers .	than minimum, except public sector wages. Increases on the minimum salary cannot be compensated with complements different from basic salary (food voucher, transportations costs, etc)	pursuant to law. All the salaries established by using it as a landmark automatically rise. All salaries are to be adjusted, not in the same amount.	agreement No legal obligation of increasing wages higher than minimum	all workers
5. What is the legal and case law treatment of wage discrimination on the grounds of sex?	Prohibition, as a matter of discrimination. Consequences: Fine, moral damage, and payment of differences .	Prohibition, as a matter of discrimination Procedure at the company level previous to the judicial action. Litigation as a matter of fundamental rights To identify discrimination, companies (> 200 workers) must publicly set (workplace regulations) positions, functions, and essential technical features.	Prohibition, as a matter of discrimination.	Prohibition, as a matter of discrimination.	Prohibition, as a matter of discrimination. As a matter of fact salaries paid to women are lower (23.9% lower than men)

		Reduced impact of the law.			
6. Which measures does your legal system include to promote wage equality? Does the company have the obligation to adopt wage transparency measures (external audit, publicity of wages, etc.)?	No legal provisions. Different actions voluntarily adopted (audits, committees, codes of conduct, websites, compliance, etc)	No legal provisions Draft legislation in process. Equality plans, affirmative actions are recognized as subjects of collective bargaining Unions may call for information concerning wages.	No legal provisions	No legal provisions	Data related to wages is open for workers. Public organisms must permanently issue wage information (categories of workers, wage rankings, compensation systems and so on)
7. What is the impact salary when calculating the compensation for termination of the employment contract? How is such compensation calculated?	Salary is used to calculate compensation. Compensation: - Government deduce monthly an 8% of worker's wage - Deductions are deposited	Salary is used to calculate compensation -Extinction due to: *company necessities, previous notice delivered by the employer, termination of insolvency proceedings:* - *"Indemnización sustitutiva*	Salary is used to calculate compensation Compensation, depends on the kind of contract: - *Contract for specific task*. The wage for the time	Salary (average last 6 months) is used to calculate compensation. Compensation, depends on the kind of contract: - *Open-ended contract.* Two components ("*preaviso"* and "*cesantía"*).	Salary (nominal value) is used to calculate compensation Amount: 1 monthly wage per each year of services or 25 daily wages (daily workers). Limit:6

Briefly, what are the most frequent cases of termination of the labor contract?	in a public fund (FGTS) - Compensation amounts to 40% of the fund balance Other rights are paid as a consequence of the contract termination Most frequent causes of extinction: - Unjustified dismissal - Resignati	*del aviso previo".* Last monthly remuneration up to 90 *UF* - *Compensation for year of services.* Up to 11 monthly remuneration and 90 *UF* - Additional component of the payment developed by jurisprudence Compensation are to be paid in case of dismissal (unjustified, undue, wrongful, abusive) and if judicially declared. The amount is increased depending on the cause.	remaining to finish off the task - *Fixed-term contract*. The wage for the time remaining to the expiry date - *Open-ended contract*. - Salary ≤ 10 *mw* = 30 daily wages for the first year of services, 20 for the following years - ≥ 10 mw 20 salary days for the	Each depends on the worker's tenure. - *Fixed-term* and *specific task* contract. Two components: - *Damages* - A *fix amount*: 1 daily salary per 7 days at work (no less than 3 or 22 salary days depending on the contract term)	monthly wages, or 150 daily wages (daily workers) Compensation is enforceable in case of dismissal. No compensation for resignation. Exception for specific categories of workers

	on - Mutual agreement Compensation varies depending on the cause of extinction		first year salary, 15 for the following years Problems to specify most frequent causes. The only relevant fact is the absence of reason, as it triggers the right to compensation.		
8. Does the legal system establish a principle of equal treatment in wages in cases of outsourcing? And when hiring workers through Temporary Employment Agencies?	No regulation for outsourcing. Level out of salaries by judicial criteria (equal work). Same salaries (direct employees and outsourced) may be agreed between companies In the case of services performed in	No regulation for outsourcing, neither temporary work agencies. The matter has been dealt with by the judiciary as a transgression of fundamental rights	Yes, temporary work agencies.	No regulation for outsourcing, neither temporary work agencies	Different legal forms of outsourcing. Equal treatment of wages just for the case of "*supply of workforce* (*suministro de mano de obra*)"

	the user enterprise, perks are applied to outsourced workers Legal rules oblige to equalize salary of temporary and regular workers				
9. Is it possible to introduce a minimum wage in a public tender offer?	N/A	No In the frame of public tender offers, companies affording higher salaries are rewarded with higher scores. As a matter of fact, favorable wage terms in public tender processes have been included as a result of collective bargainning	No regulation	No regulation	Companies taking part of tender public offers must pay wages established for the related sector and labor category.
10. Is it possible for the company to modify (by lowering) workers' salary established	No Principle of "*irreductibility"* afforded by constitution to safeguard worker's economic	No Wage reductions must be agreed (individually or collectively). Legal	No, *ius variandi*	No Wage reductions must be agreed (individually or collectively). - Damages related to	No. Principles of "*intangibility*" and "*irreductibility*" Reductions

in the labor contract or the collective agreement ? If so, in which cases? And what are the limits?	security. Exceptions are allowed in cases of serious economic crisis. Others, as *force majeure* "*judicial recovery*"(by collective agreement) Companies taking part of the public program set for recession times (PSE) can temporarily reduce salaries.	prohibition on *no reformation in pejus* (having as landmark the collective agreement)		reduction have to be compensated - Wage reduction agreements may be judicially checked - Unilateral reduction justifies contract extinction (employer's fault)	are not allowed nor unilaterally adopted, neither accepted by the worker (except in the case of working time reduction) Minimum wages collectively agreed cannot be diminished

3.3. North America

	Canada
1. Does your legal system legally regulate a minimum wage?	Different salaries. It varies by province $14 per hour (Ontario)
2. Is it frequent for collective agreements to recognize seniority bonuses? And complements or bonuses related with productivity?	Subject to legal rules. No prohibition on wage differentiation
3. Does your legal system allow, without existing a situation of discrimination, to establish a double wage scale by collective agreement (that is, different wage for work of equal value based on the date of entry into the company)? Is it allowed for the employer, without existing a situation of discrimination and without a collective agreement, to pay different wages to different employees for work of equal value?	Yes. Only pay inequality on the basis of sex is prohibited
4. What is the effect of increases on wages introduced by law or collective agreement on workers that already perceive a higher salary? Are such wage increases compensated or absorbed?	No effect.

5. What is the legal and case law treatment of wage discrimination on the grounds of sex?	- Pay inequality based on seniority or merits is permissible. - Emphasis on equal pay for work of equal value among men and women - Antidiscrimination legislation
6. Which measures does your legal system include to promote wage equality? Does the company have the obligation to adopt wage transparency measures (external audit, publicity of wages, etc.)?	- Prohibition to employers from seeking compensation history from a job applicant, - Employers must make public salary range for advertised positions, - Employers cannot retaliate against employees for making inquiries about their compensation or the disclosing of it to another employees.
7. What is the impact salary when calculating the compensation for termination of the employment contract? How is such compensation calculated? Briefly, what are the most frequent cases of termination of the labor contract?	Salary is used to calculate compensation Two regimes: Common law and minimum standards regime. Compensations: - Common law: Wage for the time remaining for extinction - Minimum standards regime: calculation of severance is based on the time of services (up to 8 weekly wages, 26 in Ontario) Most frequent cases of extinction: End of temporary or casual employment, business reasons and seasonal employment.
8. Does the legal system establish a principle of equal treatment in wages in cases of outsourcing? And when hiring workers through Temporary Employment Agencies?	N/A (Ontario)

9. Is it possible to introduce a minimum wage in a public tender offer?	Yes. Depending on local regulations
10. Is it possible for the company to modify (by lowering) workers' salary established in the labor contract or the collective agreement? If so, in which cases? And what are the limits?	No Wage modifications require individual or collective agreement.