UNIT 2. SOURCES OF LABOUR LAW

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1) Sources of Law
   - Material Sources of Law: Parliament, Government, etc
   - Formal Sources of Law: Constitution, Statues, Royal-Decrees, Regulatory provisions, customs, etc

2) Sources of Obligations
   - Law, contracts, quasi-contracts & unlawful acts/omissions involving any kind fault/negligence (Art. 1089 Civil Code)
   - Working conditions stemmed from Legal Standards: (Tougher Legal Protection Regime)
   - Working conditions stemmed from contract

* Labour Law
WORKING CONDITIONS DIFFERENT LEGAL REGIMES
(Depending on whether they have stemmed from a Source of Law or a Source of Obligations)

Different
- Personnal efficacy
- Binding force
- Modification/Elimination Legal Regime

Reasons
- Special nature of labour standards: most are of mandatory nature
- Principle of inalienability of rights: rights arising from legal standards are unwaivable
  (art. 3.5 WS)
SPECIAL LEGAL NATURE OF LABOUR STANDARDS

Absolute Mandatory Law
Ej. Art. 6 WS

Relative Mandatory Law
Ej. Art. 38 WS

Non Mandatory Law
Ej. Art. 14.1 WS
**WORKING CONDITIONS DIFFERENT LEGAL REGIMES (EXAMPLE)**

*Right to a 3rd extra pay*

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<tr>
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<th>Collective Agreement (Standard)</th>
<th>Contract of Employment</th>
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<td><strong>Personal Efficacy/Binding force</strong></td>
<td>All employers &amp; employees under the C.A’ scope</td>
<td>Employers &amp; employees individually signed it in the employment contract</td>
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| **Modification/Extinction Legal Regime** | -Only amended/eliminated through a new C.A  
-Nor by the parties’ agreement  
-Neither individually waived by employee | -Lawfully amended/eliminated through parties’ agreement  
-Lawfully individually waived by employees |
The rights and obligations regarding labour relations are regulated:

a) By the *legal and regulatory provisions* of the State.

b) By *collective agreements*.

c) By *the parties’ will* expressed in the contract of employment

d) By *local and professional practices and customs*. 
1) Incomplete list
2) Gathers Law sources and obligations sources
3) Complexity of Labour Law sources system:

* Large number of non codified Labour Standards
* Subjected to high mobility (succeed very quickly)
* Coexistence of rules of different nature and origin
* Special legal nature of Labour standards (Absolute, relative, non mandatory rules)
* Specific application principles (More beneficial condition, More favourable rule, inalienability of rights)
State shall have exclusive competence over: “Labour legislation without prejudice to its execution by the bodies of the Autonomous Regions” (art. 149.1.7 SC)

- **Legislation:** Statutes & Implementing Regulations
- **Labour:** Dependent work under employment contract
- **Execution:** Applying State laws through administrative acts
LABOUR CUSTOMS

Requirements to be enforced in labour relations

- Absence of written standard
- To be proven in Courts as evidence
- To be lawful (not contrary to law, morals or public order)
- Local & Professional

* Customs as a direct source of Law: The “called custom” or “reference custom”

(Ex. Art. 29.1 WS – Wages Payment - Art. 49.1 d) WS (Advance Notice Workers Voluntary Resignation)
LABOUR CUSTOMS APPLICATION: CONSTITUTIONAL COURT RULING 170/1987, of 30th October
(Manuel Gonzalez vs Hotel Faro Las Palomas)

- Shall be considered a misconduct if the employee refuses shaving his beard when the employer is requesting it?

- Shall the dismissal be deemed wrongful/unlawful?

Fundamental right to own image (art. 18 SC)

Constitutional Court Ruling 170/987

Labour local & professional customs (art. 3.1 d) WS)
1. General Principles of Law
   - Applied in the absence of law
   - Inform the rest of the legal system
   - Not enforceable unless they appear in Statutes or case ruling

2. Principles of Labour Law
   - Application principles: more favourable rule (art. 3.3 WS), more beneficial condition (art. 3.1 c) WS), inalienability of rights (art. 3.5 WS)
   - Construing principle: In dubio pro operario (fallen into disuse)