

DOI: 10.5281/zenodo.19980995

INCOMPATIBILITY OF CONSENT IN THE EXTENSION OF THE WORKING DAY VS. INALIENABILITY AND NON-REGRESSIVITY IN ECUADOR: A SYSTEMATIC REVIEW

Teddy Enrique Ramos Ramos^{1*}, Héctor Esteban Contreras Febres Cordero² and Pedro Xavier Álvarez Betancourt³

¹Universidad Estatal Península De Santa Elena. Email: teddy.ramosramos2998@upse.edu.ec, Orcid ID: <https://orcid.org/0000-0003-3776-6272>,

²Universidad Estatal Península De Santa Elena. Email: hcontreras880@upse.edu.ec

³Universidad Estatal Península De Santa Elena. Email: palvarez9847@upse.edu.ec, Orcid ID: <https://orcid.org/0009-0003-8598-8184>

Received: 15/03/2026
Accepted: 18/04/2026

Corresponding Author: Teddy Enrique Ramos Ramos
(teddy.ramosramos2998@upse.edu.ec)

ABSTRACT

In a context marked by increasing labor flexibility and structural asymmetries, the regulation of working hours has become a critical area of tension between contractual autonomy and the protection of labor rights. The objective is to analyze the legal incompatibility between worker consent regarding the extension of the working day and the principles of inalienability and non-regressivity of rights within the Ecuadorian regulatory and jurisprudential framework, through a systematic literature review. The study adopted a qualitative systematic review design, following PRISMA guidelines to ensure transparency and rigor; data were collected from academic databases and legal repositories, applying inclusion criteria centered on labor law, working time regulation, and fundamental labor principles. The findings reveal that the Ecuadorian legal system establishes a hierarchical and interdependent framework in which worker consent is not fully autonomous but is conditioned by mandatory norms and constitutional principles. Both doctrine and jurisprudence agree in recognizing that consent cannot legitimize the waiver or reduction of labor rights, especially when it involves extended working hours without adequate safeguards. Judicial interpretations, though limited, consistently prioritize progressivity and the prohibition of regression. Significant gaps persist, such as the lack of specific jurisprudence on the extension of the working day and the absence of structured tests to apply the principle of non-regression. In conclusion, worker consent to extend the working day is subject to legal limitations and, in many cases, is incompatible with fundamental labor principles, highlighting the need for greater doctrinal clarity and jurisprudential development to ensure consistency in labor protection.

KEYWORDS: Consent, Extension of the Working Day, Labor Law, Ecuador, Systematic Review.

1. INTRODUCTION

Labor law has been historically conditioned by the constant transformations of labor relations and production systems (Silva & Silva, 2020; Sutrisno, 2025), intensifying the pressure on regulatory structures. In essence, this implies legal rights and obligations (Chapman, 2017) designed to protect workers under conditions that meet three essential characteristics: (a) the provision of personal services to an employer; (b) the receipt of remuneration; and (c) the performance of activities under the direction and control of the employer (Rodríguez, 2025).

On the other hand, the regulation of working time has become one of the most controversial areas, especially regarding the extension of the working day through agreements. While these agreements are often presented as expressions of contractual autonomy, they raise significant concerns regarding the protection of fundamental labor rights. This tension is particularly accentuated in legal systems based on protectionist principles, where the power asymmetry inherent in labor relations justifies limitations on individual autonomy.

In Ecuador, labor occupies a central place within the framework of the Labor Code, being recognized as a fundamental right and a social duty (Asamblea Nacional del Ecuador, 2020, Article 2). Likewise, the Constitution of Ecuador enshrines key principles such as inalienability (*irrenunciabilidad*) and intangibility (Asamblea Nacional del Ecuador, 2008, Article 326), which act as structural limits to freedom of contract. These principles dictate that employees cannot waive the minimum rights guaranteed by law, nor can working conditions be altered in a way that diminishes previously established levels of protection.

From a doctrinal perspective, the concept of consent in labor law is traditionally associated with contractual autonomy and the parties' freedom to define the terms of their relationship (Niezna & Davidov, 2023). However, unlike civil law, this autonomy is subject to significant limitations due to the need to protect the weaker party in the employment relationship. Within this framework, the principle of inalienability establishes that workers cannot waive rights recognized as minimum guarantees, regardless of their explicit consent (Gerónimo de la Cruz, 2020), while the principle of non-regressivity prohibits any deterioration of existing labor rights (Guzmán & Vázquez, 2021). Together, these principles form a normative barrier against practices that may appear voluntary but ultimately undermine the protective function of labor law.

At the international level, the regulation of time has been recognized as a fundamental component of decent work. The International Labour Organization (OIT) has highlighted that excessive working hours harm the physical and mental health of workers, as well as their work-life balance (OIT, 2019). Furthermore, international human rights frameworks reinforce the principle of progressivity, guaranteeing its continuous expansion rather than its regression (Mancilla, 2015). In this sense, individual consent cannot be considered sufficient justification to evade minimum labor standards.

These considerations acquire special relevance in the debate over the extension of the working day. Comparative labor law doctrine has highlighted that the principle of inalienability is specifically designed to neutralize waivers obtained under conditions of structural inequality and economic coercion, even when workers appear to act voluntarily (Bogoeski, 2023; Davidov, 2020). Consequently, individual agreements authorizing longer working hours without adequate compensation or under conditions of subordination cannot be easily interpreted as genuine expressions of autonomy, as they risk reintroducing market logics that labor law seeks to mitigate.

Studies have documented that the flexibilization and extension of the working day whether through legal reforms, administrative mechanisms, or contractual clauses has often resulted in an increased workload, lower effective remuneration, and the weakening of fundamental guarantees such as rest and job stability (Arrobo & Contreras, 2023; Cangas et al., 2021). Parallely, Ecuadorian jurisprudence has progressively addressed the limits of consent in labor relations, particularly in cases where formal agreements conceal the waiving of rights, labor fraud, or regressive flexibilization practices (Laines et al., 2026; Taboada et al., 2024). These rulings highlight both the centrality of protective principles as interpretive criteria and the persistence of regulatory gaps and inconsistent judicial approaches.

At a theoretical level, contemporary debates on inalienability and consent in labor law question the validity of so-called "waivers" or individual renunciations of rights, particularly regarding working time. It is argued that allowing a worker to opt for extending their workday beyond legal limits, even under the guise of individual benefit, undermines the emancipatory function of labor law and reopens the door to forms of exploitation based on economic necessity and the structural inequality of the labor relationship (Bogoeski, 2023; Davidov, 2020). At the same time, intermediate solutions are

discussed that recognize certain margins of individual autonomy without denaturing the public order status of protective norms or enabling regressions in the collective standard of protection (Bogoeski, 2023). These approaches are particularly relevant to the Ecuadorian context, where flexibilization pressures, robust constitutional principles, and evolving jurisprudence coexist.

Socio-legal literature addresses specific issues such as the redistribution of the working day, exploitation in the public sector, termination of the employment relationship, ineffective dismissal, and reinforced stability (Arita, 2022; Davies & Ollus, 2019; Mullens & Laurijssen, 2024; Villacis & Pachano, 2023), without integrally articulating the role of consent as a legitimizing criterion or as a possible vehicle for the regression of rights. Meanwhile, developments regarding the waiver of rights and the "opt-out" of working hour limits have not yet been systematically incorporated. Given the persistence of these tensions and the lack of consensus, an updated and systematic analysis is required. This study aims to analyze the legal incompatibility between worker consent in the extension of the working day and the principles of inalienability and non-regressivity of rights within the Ecuadorian normative and jurisprudential context, through a systematic literature review.

To achieve this objective, the study addresses the following research questions: (i) What normative framework governs working time, worker consent, and the principles of inalienability and non-regression in Ecuador, considering constitutional, legal, and international instruments?, (ii) What doctrinal stances and theoretical approaches address the validity or invalidity of worker consent in the context of extending the working day?, (iii) How have Ecuadorian courts interpreted the tension between worker consent, the extension of the working day, and the protection of labor rights?, (iv) What convergences, tensions, and gaps exist in the literature and jurisprudence regarding the compatibility or incompatibility of worker consent with the principles of inalienability and non-regressivity?

Through these axes, the study is expected to contribute to conceptual clarification and greater coherence in the labor protection system, providing analytical insights for future regulatory reforms and the strengthening of judicial and doctrinal reasoning regarding working time and the protection of fundamental labor rights

2. RESEARCH METHODOLOGY

2.1. Research Design

The present study adopted a systematic review design to analyze the incompatibility of worker consent in the extension of the working day with the principles of inalienability and non-regressivity in Ecuador. Unlike conventional reviews, this research follows a qualitative legal systematic review approach, integrating normative analysis, doctrine, and jurisprudential interpretation. Furthermore, it was conducted in accordance with the PRISMA (Preferred Reporting Items for Systematic Reviews and Meta-Analyses) guidelines (Page et al., 2021), ensuring transparency, reproducibility, and methodological rigor in the identification, selection, and analysis of relevant legal sources.

2.2. Data Sources and Search Strategy

An exhaustive search was conducted across multiple databases and legal repositories to identify relevant sources. These included academic databases such as Scopus, Web of Science, and Google Scholar, as well as official legal databases and institutional repositories containing Ecuadorian legislation and jurisprudence. The search strategy combined keywords and Boolean operators (AND/OR) in both English and Spanish to capture the multidimensional nature of the topic. The primary search terms included: "working time extension," "labor consent," "inalienability of rights," "non-regressivity," "labor law Ecuador," and "regulation of working hours." The following search string was adapted for each database: ("working time" OR "working hours" OR "working time extension") AND ("labour consent" OR "worker consent") AND ("irrenunciability" OR "non-waivable rights") AND ("non-regressivity" OR "progressivity of rights") AND ("Ecuador" OR "labour law Ecuador")

2.3. Inclusion And Exclusion Criteria

To ensure relevance and coherence, the following inclusion criteria were applied:

- Peer-reviewed journal articles, books, and book chapters addressing labor law, working time, or labor rights principles.
- Legal documents, including constitutional provisions, statutory regulations, and international labor instruments.
- Jurisprudential sources from Ecuadorian courts, particularly constitutional rulings.
- Publications in English or Spanish.
- Studies published up to the present (2026).

The exclusion criteria included:

- Studies not directly related to labor law or

working time regulation.

- Non-academic sources lacking academic or legal rigor.
- Duplicate records across different databases.
- Opinion pieces without analytical or theoretical grounding.

2.4. Study Selection Process

The selection process followed the PRISMA flow diagram (Figure 1). Initially, all records identified through database searches were compiled, and

duplicates were removed. Subsequently, titles and abstracts were screened to assess their relevance to the research questions. Full-text documents were then reviewed to determine eligibility based on the inclusion and exclusion criteria. Particular attention was paid to sources addressing the relationship between consent and inalienable labor rights. The final sample included normative sources (constitutional, statutory, and international), doctrinal works, and jurisprudential decisions, ensuring a comprehensive and triangulated analysis.

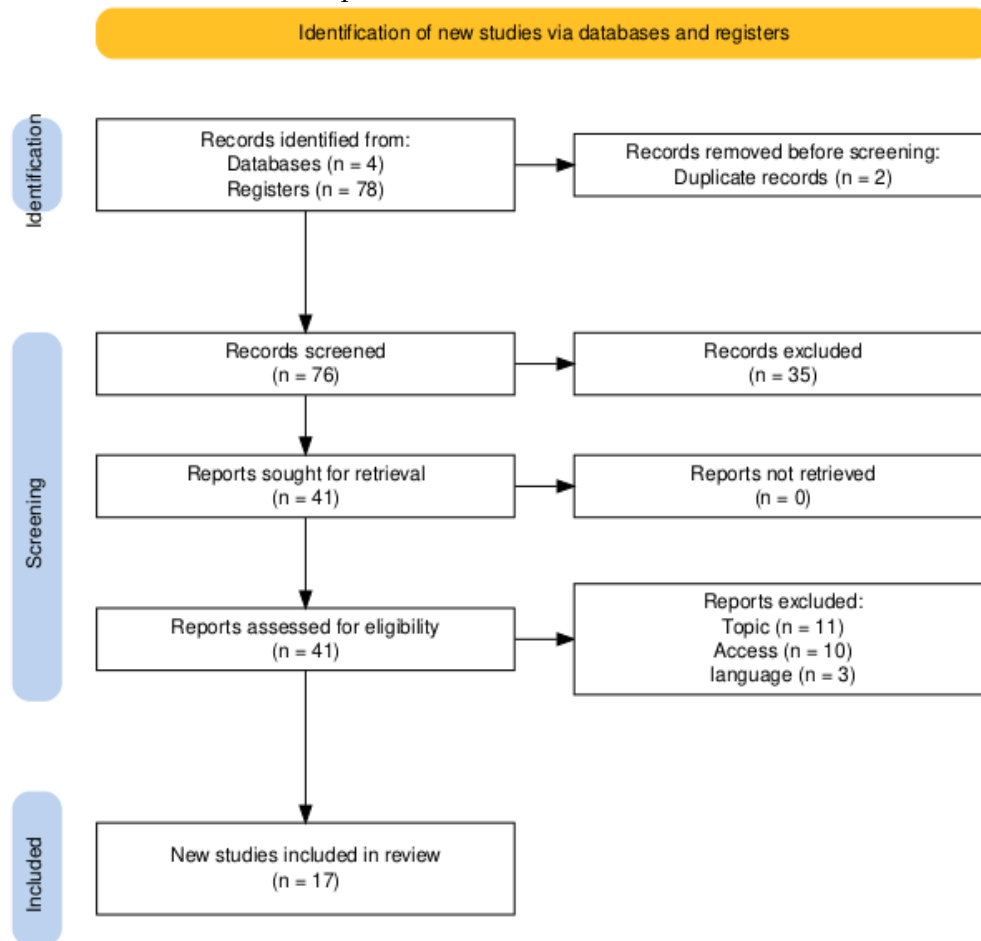


Figure 1: Prisma Flowchart.

2.5. Data Extraction and Analysis

Data extraction was performed using a structured matrix designed to capture key analytical dimensions aligned with the research objectives.

These dimensions included:

- Source type (normative, doctrinal, jurisprudential).
- Conceptualization of consent.
- Interpretation of inalienability and non-regressivity.
- Position on the validity or invalidity of consent for the extension of working time.

- Key conclusions or legal reasoning.

The analysis followed a thematic synthesis approach, allowing for the identification of recurring patterns, conceptual tensions, and gaps among sources. The normative analysis focused on the hierarchical structure of legal norms, while doctrinal and jurisprudential sources were examined through interpretive legal reasoning.

2.6. Reliability And Validity

To enhance reliability, the study employed transparent selection criteria and replicable search

strategies. Additionally, the use of multiple data sources and the triangulation between normative, doctrinal, and jurisprudential materials reinforced the internal validity of the findings. Concurrently, the systematic application of PRISMA guidelines contributed to methodological consistency, while the critical evaluation of sources ensured analytical rigor

3. RESULTS

3.1. Regulatory Framework on Working Time, Consent, Inalienability, And Non-Regressivity

The analysis of the Ecuadorian regulatory framework demonstrates that the regulation of working time, worker consent, and the principles of inalienability and non-regression are structured in a hierarchical and interdependent manner. This system, rooted in constitutional, statutory, and international norms, configures a framework of reinforced protection for labor rights.

At the highest level, the Constitution of the Republic of Ecuador (2008) recognizes work as a fundamental right that must be performed under dignified conditions, setting limits on the working day and guaranteeing rest periods (Arts. 33 and 326) (Asamblea Nacional del Ecuador, 2008). Furthermore, it expressly enshrines the principle of inalienability of labor rights, meaning any worker consent lacks legal validity if it implies the reduction or waiver of such rights. Additionally, the principle of non-regression, derived from the principle of progressivity, prohibits measures that diminish established levels of labor protection. From this perspective, regressive norms or practices that unjustifiably hinder them (Camargo & Córdova, 2018; Vera Vélez et al., 2023; Vinueza Ochoa et al., 2021)z et al., 2023; Vinueza Ochoa et al., 2021).

At the statutory level, the Labor Code develops these constitutional mandates by establishing concrete limits on the working day, regulating supplementary and extraordinary hours, and guaranteeing mandatory rest periods (Arts. 47 and 50) (Asamblea Nacional del Ecuador, 2020). It reaffirms the inalienable nature of worker rights, declaring null and void any contractual stipulation that disregards or reduces them (Art. 4). In this context, worker consent is legally conditioned; it is only valid when framed within the minimum standards established by mandatory law (*normativa imperativa*).

Internationally, instruments adopted by the Ecuadorian State, particularly ILO Conventions, the American Convention on Human Rights, the Protocol of San Salvador, and the International Covenant on Economic, Social and Cultural Rights –

reinforce the obligation to ensure fair working conditions and respect the progressivity of social rights (Organización de los Estados Americanos, 1988; OIT, 2022; Secretaria General OEA, 1969). These instruments form part of the block of constitutionality, consolidating the prohibition of regressivity and strengthening protection against potential abuses.

3.2. Doctrinal Positions on the Validity of Consent in the Extension or Reconfiguration of the Working Day

The reviewed studies reveal an intense doctrinal debate regarding the validity of worker consent in contexts of work intensification or the extension of working time, structured around several theoretical approaches.

A central line of thought argues that worker consent is legally relevant but insufficient to legitimize potentially exploitative labor relations, especially when they involve work intensification or extended working hours. Authors such as Niezna (2024) y Niezna & Davidov (2023) agree that legitimacy further requires an evaluation of substantive justice, working conditions, and the protection of the worker's dignity. Thus, even when a worker accepts more hours, the validity of that consent remains conditioned by standards of fair treatment and by labor public policy limits (inalienability of rights, maximum working hours, rest periods, etc.).

From Marxist and critical-materialist perspectives, consent within the labor contract is viewed as a legal fiction that conceals structural relations of subordination and economic coercion. Banaji (2003) indicates that the liberal narrative of free contractual choice legitimizes an almost unlimited subordination of the worker under the guise of a voluntary agreement. Within this framework, the rigid division between free and unfree labor is questioned: even formally free labor, including the extension of the working day, is permeated by dependency and material necessity, which casts doubt on the substantive validity of consent.

The position held by Niezna & Davidov (2023) proposes understanding worker consent as a continuum in which degrees of coercion and choice always coexist, given the recognized power imbalance in the labor relationship. Under this approach, labor law cannot treat consent as a binary of valid/null; rather, it must be graduated according to procedures that guarantee information and relative freedom (formal rules, written requirements,

specificity, and real-time adjustments). Furthermore, material standards must limit the efficacy of consent when it conflicts with inalienable rights (e.g., waiving maximum hour limits without reasonable compensation or collective oversight). This perspective directly reflects the discussion on the validity of clauses or agreements concerning the variation of conditions (*ius variandi*) and the waiver of rights related to working time and rest.

On the other hand, a more recent doctrinal current links the analysis of consent to theories of labor exploitation.

Three major approaches are distinguished (Ballard et al., 2023; Niezna, 2024):

- **Unfair Advantage Approaches:** These prioritize whether the extension of the working day involves improperly taking advantage of the worker's vulnerable position. Here, consent carries little weight if the result is materially unjust.
- **Dignity Approaches:** These focus on whether the conditions (including the extension of the working day) degrade or deny the minimum conditions for a dignified life; in such cases, consent becomes practically irrelevant.
- **Coercion Approaches (Individual and Structural):** These suggest that, even where a manifestation of will exists, it occurs under economic and structural pressures that drain the freedom to accept more hours of its substance, placing many extension agreements near a continuum between decent work and forced labor.

From this viewpoint, authors reject the thesis that "exploitation cannot be consented to," arguing instead that individuals do, in fact, consent to exploitative jobs (including excessive workloads) while immersed in contexts of structural coercion. Therefore, the normative focus must shift from formal will to the correction of unacceptable conditions.

Some approaches, particularly in studies on migrant or community worker, conceive of exploitation primarily as a violation of legal employment standards (minimum wage, hour limits, health and safety) and consider it secondary whether the worker consented or not (Ballard et al., 2023; Dias, 2024). Under this perspective, the validity of an agreement to extend the working day is defined by its compliance with normative standards (including the prohibition of excessive hours and the principle of non-regressivity) rather than by individual will.

3.3. Judicial Interpretation of the Tension Between Consent, Working Hours, And the

Protection of Rights

Although jurisprudential output directly centered on the extension of the working day with worker consent is limited, the analyzed decisions regarding the Humanitarian Support Law (*Ley de Apoyo Humanitario*) and the protection of the right to work demonstrate a protective (*garantista*) trend.

In judicial pronouncements and doctrinal analyses of constitutional decisions, it is highlighted that:

- The reduction of working hours with a corresponding salary reduction, even when authorized by law, violates the intangibility of rights and may be considered unconstitutional due to its regressive nature and its impact on the ability to cover basic needs with a living wage (Vera et al., 2023; Vinueza et al., 2021).
- The creation of "emergent contracts" and the employer's authority to unilaterally redistribute working hours are considered incompatible with inalienability and intangibility, insofar as they place the worker before forced options (accepting worsened conditions or facing job loss) (Vera et al., 2023).
- In practice, the massive reduction of working days and remuneration following the pandemic (affecting tens of thousands of reduced-hour contracts) has been interpreted as a phenomenon of precarization. This clashes with the constitutional mandate of progressivity and the prohibition of regressive measures without rigorous justification (Vera et al., 2023; Vinueza et al., 2021).

In parallel, comparative studies on working time and time-tracking in other legal systems, including jurisprudence on daily and weekly rest, time-tracking records, and teleworking, reinforce the idea that organizational adjustments cannot be used to diminish already recognized rights, even under the guise of individual agreements or consent (Dias, 2024; Nogueira, 2024; Rojo, 2023). Although these precedents are not Ecuadorian, they have been utilized doctrinally as interpretive benchmarks for a protective standard.

3.4. Convergences, Tensions, And Gaps Between Literature and Jurisprudence on The (In)Compatibility of Consent with Inalienability and Non-Regressivity

At the doctrinal and jurisprudential levels, there is strong convergence regarding the centrality of the principles of inalienability and intangibility of labor rights. Both bodies of knowledge consistently affirm that labor rights in Ecuador cannot be waived and

that any agreement aimed at suppressing or reducing them is legally null and void, even when the worker's formal consent exists (Camargo & Córdova, 2018; Vera et al., 2023; Vinueza et al., 2021). This shared position reinforces a protective constitutional framework in which individual autonomy is structurally subordinated to the preservation of minimum labor standards.

Another point of convergence refers to the regressive character attributed to labor reforms affecting the working day, especially those adopted in contexts of economic crisis. Both academic analyses and jurisprudence tend to characterize measures such as the redistribution of working hours, the de facto extension of the working day without overtime compensation, and the reduction of working hours accompanied by proportional salary cuts as detrimental to fundamental rights (Cavas, 2024; Vinueza et al., 2021). These measures are widely interpreted as incompatible with the principle of progressivity, insofar as they reduce the level of protection previously achieved.

Furthermore, there is a broad consensus on the insufficiency of individual consent as a guarantee of workers' rights. In labor markets marked by structural asymmetries, such as high levels of informality, unemployment, and inequality in bargaining power, consent is not considered a fully free or autonomous expression of will (Cavas, 2024). Consequently, both doctrine and jurisprudence reject the idea that worker consent can legitimize agreements that imply, in practice, the waiver or regression of fundamental rights, such as maximum working hours, fair remuneration, and minimum job security.

Despite these convergences, significant tensions arise, particularly regarding the balance between labor flexibility and worker protection. Some currents in the literature identify an association between flexible work modalities and certain employment indicators, thus advocating for adaptive regulatory mechanisms in the organization of working time (Nogueira, 2024). However, this stance conflicts with a more protectionist doctrinal approach, which emphasizes that many flexibility-oriented measures, especially when implemented without adequate safeguards, lead to the erosion of labor rights and, therefore, contravene constitutional guarantees (Cavas, 2024).

Another tension emerges regarding the scope of *ius variandi* and the limits of contractual autonomy. While some authors advocate for a clearer normative recognition of the employer's power to modify working conditions to meet productive needs, others

argue that, given the binding force of inalienability and non-regression, any modification that worsens working conditions must be strictly restricted (Cavas, 2024; Vera et al., 2023). From this latter perspective, extensions or redistributions of working time that negatively affect workers cannot be justified solely on the basis of consent; rather, they must be subjected to rigorous constitutional scrutiny.

The analysis also reveals significant gaps. There is a notable scarcity of jurisprudence specifically addressing the legal validity of worker consent in cases of extension or intensification of the working day, especially when such changes occur without corresponding overtime compensation. While judicial pronouncements exist on related issues, such as the reduction of working hours and wages or the regulation of emergency contracts, the explicit treatment of consent in this specific context remains limited.

Likewise, there is a lack of systematically developed criteria to apply the principle of non-regression to working time regulations. Although this principle is frequently invoked, Ecuadorian jurisprudence has not yet articulated a structured test incorporating elements such as necessity, proportionality, temporality, and compensatory measures to evaluate the constitutional admissibility of labor reforms justified by economic crises.

Finally, an insufficient articulation persists between international labor standards and national legal practice regarding the role of consent. Although the constitutional framework requires the application of international instruments, the explicit incorporation of standards developed by organizations such as the International Labour Organization (ILO), as well as comparative jurisprudence on the limits of contractual autonomy regarding working time, rest, and occupational health, remains underdeveloped in Ecuadorian case law.

4. DISCUSSION

The findings of this review reveal a structurally consistent yet theoretically contested legal framework in which worker consent to the extension of the working day operates under strict regulatory restrictions. The Ecuadorian legal system, grounded in constitutional supremacy, statutory regulation, and international labor standards, conceives consent not as an autonomous legitimizing mechanism, but as a subordinate legal expression conditioned by the principles of inalienability and non-regression. This interpretation directly addresses the first research question by demonstrating that the regulatory

architecture does not permit the waiver or deterioration of labor rights through individual agreements, even when such agreements are formally expressed.

From a doctrinal perspective, the results confirm that contemporary labor law theory increasingly rejects the classic liberal assumption of free and equal contractual consent in employment relationships. Instead, the literature converges toward a material and relational understanding of consent, where structural inequality, economic dependency, and power asymmetries significantly undermine its validity. This aligns with the second research question and reinforces the idea that consent, in the context of extended working hours, must be evaluated not only from a procedural standpoint (e.g., informed, explicit) but also from a substantive one (e.g., fair, non-exploitative, dignity-preserving). The reviewed approaches, particularly those based on exploitation theory and critical labor analysis, support the conclusion that consent cannot legitimize working conditions that violate minimum labor standards or infringe upon human dignity.

Judicial interpretation in Ecuador, while limited in directly addressing consent in workday extensions, reflects a protective constitutional hermeneutics. Courts have systematically prioritized the principles of progressivity and the prohibition of regression, especially in cases arising from labor flexibility measures during economic crises. This answers the third research question and suggests that, even in the absence of explicit rulings on consent and the working day, the judiciary implicitly invalidates agreements that place workers in coercive or disadvantageous positions. The jurisprudential trend to examine labor reforms for their regressive effects indicates that worker consent is unlikely to be considered valid when it results in a decrease in protection.

The convergence between doctrine and jurisprudence is particularly strong regarding the invalidity of consent as a mechanism to waive or reduce labor rights. Both spheres affirm that labor rights are not entirely dispensable and that their protection constitutes a matter of public policy. However, tensions arise when considering labor market flexibility and the employer's prerogatives (*ius variandi*). While some academic contributions advocate for adaptive regulatory frameworks to address economic realities, the Ecuadorian constitutional model imposes rigid substantive limits that restrict such flexibility when it implies a regression of workers' rights. This tension reflects a broader global debate between efficiency-oriented

labor policies and rights-based approaches.

In comparison with international doctrinal studies not included in the primary results, these findings show a strong alignment with broader trends in labor law. Among them, the International Labour Organization highlights that excessive working days and voluntary overtime often occur in contexts of economic pressure, which undermines the authenticity of worker consent and reinforces the need for regulatory limits (OIT, 2019). Similarly, Collins (2024) argues that the function of labor law is precisely to correct market inequalities that distort contractual freedom, thereby justifying restrictions on consent in employment contracts.

Furthermore, the Organización Mundial del Comercio (2019) highlights that the relationship between labor regulation and economic performance indicates that weakening protective labor standards under the guise of flexibility does not necessarily yield sustainable economic gains and, instead, may exacerbate inequality. This supports the stance that allowing consent to justify extended working hours without robust safeguards can lead to precarization rather than productivity gains. Moreover, studies such as Ramírez (2022) emphasize the principle of non-regression as a cornerstone of social rights protection, arguing that any normative or contractual measure that reduces labor standards must undergo strict scrutiny regarding necessity and proportionality.

Despite these convergences, the study identifies significant gaps. The absence of systematic jurisprudential criteria to evaluate the validity of consent in workday modifications generates legal uncertainty. Furthermore, the lack of a structured test to apply the non-regression principle, incorporating elements such as proportionality, temporality, and compensatory measures, limits the application of constitutional guarantees. These deficiencies evidence the need for doctrinal and judicial development to clarify when, if ever, worker consent can be considered compatible with constitutional labor protections.

In synthesis, the analysis confirms that, within the Ecuadorian legal order, worker consent to the extension of the working day is *prima facie* incompatible with the principles of inalienability and non-regression when it entails a decrease in labor protection. Consent retains only a residual and conditional validity, bounded by mandatory norms and subject to constitutional scrutiny. This reinforces a protective model of labor law in which the preservation of human dignity and minimum standards prevail over contractual autonomy,

aligning Ecuador with contemporary trends in international labor law while underscoring the need for greater doctrinal precision and jurisprudential development.

5. CONCLUSION

The systematic review demonstrated that, within the Ecuadorian legal order, worker consent to the extension of the working day is structurally incompatible with the principles of inalienability and non-regressivity when it involves any reduction in labor protection. Consent does not function as an autonomous legitimizing mechanism but as a subordinate legal construct, bounded by constitutional supremacy, mandatory labor norms, and international human rights standards.

Furthermore, the Ecuadorian regulatory framework encompassing constitutional, statutory, and international levels establishes a hierarchically integrated system of reinforced protection in which labor rights are inalienable. Consequently, any agreement extending the working day is legally valid only if it strictly complies with maximum limits, rest guarantees, and non-regression norms; otherwise, it is null and void and lacks legal effect, regardless of the worker's explicit consent.

Contemporary labor law doctrine converges in rejecting a purely formal notion of consent, emphasizing instead its material and relational dimensions. Theoretical approaches based on exploitation, dignity, and structural coercion reveal that worker consent in contexts of prolonged working hours is often vitiated by power

asymmetries and economic necessity, thus lacking sufficient normative force to justify a potential deterioration of rights.

Ecuadorian jurisprudence, while not extensively developed regarding working-day extensions *per se*, reflects a consistent protective constitutional orientation that prioritizes progressivity and prohibits regression. Courts implicitly invalidate agreements that even under apparent consent place workers in coercive or disadvantageous conditions, reinforcing the limited legal relevance of consent in such contexts.

Additionally, a strong convergence was evidenced between doctrine and jurisprudence regarding the invalidity of consent as a mechanism to waive or reduce labor rights. However, significant tensions persist between labor flexibility and the protection of rights, alongside major gaps particularly the absence of systematic judicial tests to determine non-regression and the limited application of international labor standards in national case law.

Based on the above, future research should focus on developing operative legal criteria to evaluate the validity of worker consent in working-time agreements, including proportionality, necessity, temporality, and compensatory guarantees. Furthermore, empirical and comparative studies are needed to examine how different jurisdictions reconcile flexibility with non-regression, as well as to systematically integrate international labor standards and socioeconomic variables into the assessment of consent within asymmetric labor relations.

Declaration Of Generative Ai and Ai-Assisted Technologies in the Writing Process: In the preparation of this manuscript, the authors utilized Scopus AI to enhance the bibliographic search strategy and ensure a comprehensive literature review. Gemini (3 Flash model) was subsequently employed for technical translation from Spanish into English and to refine the academic register of the text. The authors have meticulously reviewed and edited all AI-assisted outputs to ensure theoretical consistency and technical precision. The final content and integrity of this work remain the sole responsibility of the authors.

Author Contributions: Conceptualization, T.E.R.R., H.E.C.F.C. and P.X.Á.B.; methodology, T.E.R.R. and H.E.C.F.C.; software, P.X.Á.B.; validation, T.E.R.R., H.E.C.F.C. and P.X.Á.B.; formal analysis, H.E.C.F.C. and P.X.Á.B.; investigation, T.E.R.R. and H.E.C.F.C.; resources, P.X.Á.B.; data curation, T.E.R.R. and H.E.C.F.C.; writing—original draft preparation, T.E.R.R.; writing—review and editing, H.E.C.F.C. and P.X.Á.B.; visualization, P.X.Á.B.; supervision, T.E.R.R.; project administration, H.E.C.F.C. All authors have read and agreed to the published version of the manuscript.

Acknowledgements: The authors wish to express their gratitude to the Universidad Estatal Península de Santa Elena.

REFERENCES

Arita, K. (2022). Legal Regulation of Dismissal in Japan. *King's Law Journal*, 33(2), 228–247.

- <https://doi.org/10.1080/09615768.2022.2101350>
- Arrobo-García, J. D., & Contreras-Pérez, F. G. (2023). Análisis del Ius Variandi en Ecuador: los retos del Código del Trabajo. *Revista Metropolitana de Ciencias Aplicadas*, 6(2), 50–60. <https://doi.org/10.62452/h8qqew24>
- Asamblea General. (1976). *Pacto Internacional de Derechos Económicos, Sociales y Culturales*.
- Asamblea Nacional del Ecuador. (2008). Constitución de la República del Ecuador 2008. In *Registro Oficial* (Vol. 449, Number 20). https://www.defensa.gov.ec/wp-content/uploads/downloads/2021/02/Constitucion-de-la-Republica-del-Ecuador_act_ene-2021.pdf
- Asamblea Nacional del Ecuador. (2020). *Código del Trabajo. Codificación 17 Registro Oficial Suplemento 167 de 16-dic.-2005*. www.lexis.com.ec
- Ballard, M., Olaniran, A., Iberico, M. M., Rogers, A., Thapa, A., Cook, J., Aranda, Z., French, M., Olsen, H. E., Houghton, J., Lassala, D., Carpenter Westgate, C., Malitoni, B., Juma, M., & Perry, H. B. (2023). Labour conditions in dual-cadre community health worker programmes: a systematic review. *The Lancet Global Health*, 11(10), e1598–e1608. [https://doi.org/10.1016/S2214-109X\(23\)00357-1](https://doi.org/10.1016/S2214-109X(23)00357-1)
- Banaji, J. (2003). The Fictions of Free Labour: Contract, Coercion, and So-Called Unfree Labour. *Historical Materialism*, 11(3), 69–95. <https://doi.org/10.1163/156920603770678319>
- Bogoeski, V. (2023). Nonwaivability of Labour Rights, Individual Waivers and the Emancipatory Function of Labour Law. *Industrial Law Journal*, 52(1), 179–213. <https://doi.org/10.1093/indlaw/dwac020>
- Camargo, T., & Córdova, M. (2018). Codificación en el derecho de trabajo actual y el derecho de los trabajadores migrantes en el ecuador. *Revista de Investigación Enlace Universitario*, 17(1), 10–17. <https://doi.org/10.33789/enlace.17.35>
- Cangas Oña, L. X., Salazar Andrade, L. B., & Iglesias Quintana, J. X. (2021). Explotación laboral en el sector público ecuatoriano de la salud. *Dilemas Contemporáneos: Educación, Política y Valores*. <https://doi.org/10.46377/dilemas.v9i.2997>
- Cavas Martínez, F. (2024). El registro de jornada no es instrumento hábil para modificar condiciones laborales o desconocer derechos. *Revista de Jurisprudencia Laboral*, (4). https://doi.org/10.55104/RJL_00535
- Chapman, A. (2017). Labor Law. In *The Wiley-Blackwell Encyclopedia of Social Theory* (pp. 1–2). Wiley. <https://doi.org/10.1002/9781118430873.est0199>
- Collins, H. (2024). The Many Ideas of Labour Law. In *The Oxford Handbook of the Law of Work* (pp. 157–170). Oxford University Press. <https://doi.org/10.1093/oxfordhb/9780192870360.013.13>
- Davidov, G. (2020). Non-waivability in Labour Law. *Oxford Journal of Legal Studies*, 40(3), 482–507. <https://doi.org/10.1093/ojls/gqaa016>
- Davies, J., & Ollus, N. (2019). Labour exploitation as corporate crime and harm: outsourcing responsibility in food production and cleaning services supply chains. *Crime, Law and Social Change*, 72(1), 87–106. <https://doi.org/10.1007/s10611-019-09841-w>
- Dias-Abey, M. (2024). Patterns of Exploitation: Understanding Migrant Worker Rights in Advanced Democracies. *Industrial Law Journal*, 53(3), 565–568. <https://doi.org/10.1093/indlaw/dwae026>
- Gerónimo de la Cruz, J. (2020). El El test de disponibilidad de derechos frente al principio de irrenunciabilidad en el nuevo proceso laboral. *Revista de Derecho Procesal Del Trabajo*, 1(1), 115–130. <https://doi.org/10.47308/rdpt.v1i1.6>
- Guzmán-Calle, J. G., & Vázquez-Calle, J. L. (2021). Vulneración al principio de progresividad y no regresividad producto de la vigencia del contrato especial emergente. *Revista Científica FIPCAEC (Fomento De La Investigación y Publicación Científico-Técnica Multidisciplinaria)*, 6(5), 280–299.
- Laines Alvarez, Y. M., González Parra, A. S., & Gaona Angamarca, E. K. (2026). Terminación de la Relación Laboral: Un Análisis Integral de sus Implicaciones legales, Modalidades y Requisitos. *Revista Universidad de Guayaquil*, 140(1), 164–182. <https://doi.org/10.53591/rug.v140i1.2529>
- Mancilla Castro, R. G. (2015). El principio de progresividad en el ordenamiento constitucional mexicano. *Cuestiones Constitucionales*, 33, 81–103. <https://doi.org/10.1016/j.rmhc.2016.03.016>
- Mullens, F., & Laurijssen, I. (2024). An organizational working time reduction and its impact on three domains of mental well-being of employees: a panel study. *BMC Public Health*, 24(1), 1727. <https://doi.org/10.1186/s12889-024-19161-x>
- Niezna, M. (2024). Consent to Labour Exploitation. *Industrial Law Journal*, 53(1), 3–33. <https://doi.org/10.1093/indlaw/dwad036>
- Niezna, M., & Davidov, G. (2023). Consent in Contracts of Employment. *The Modern Law Review*, 86(5), 1134–1165. <https://doi.org/10.1111/1468-2230.12802>

- Nogueira Guastavino, M. (2024). Registro de jornada y alcance del derecho de información de los representantes de los trabajadores en relación con los datos personales de identificación de las personas trabajadoras. *Revista de Jurisprudencia Laboral (RJL)*, (9), 1–8. <https://dialnet.unirioja.es/servlet/articulo?codigo=9827366>
- Organización de los Estados Americanos. (1988). *Protocolo adicional a la Convención Americana sobre derechos humanos en materia de derechos económicos, sociales y culturales. Protocolo de San Salvador*. Organización de los Estados Americanos. <https://share.google/fa546LzoxnSs0Hcen>
- Organización Internacional del Trabajo. (2019). *Guía para establecer una ordenación del tiempo de trabajo equilibrada*. OIT. <https://share.google/K7UZNRisodWSjzoV6>
- Organización Internacional del Trabajo. (2022). *Declaración de la OIT relativa a los principios y derechos fundamentales en el trabajo y su seguimiento*. Organización Internacional del Trabajo. <https://www.ilo.org/es/resource/otro/declaracion-de-1998-de-la-oit-relativa-los-principios-y-derechos>
- Organización Mundial del Comercio. (2019). Enforcement of Labour Regulation and the Labour Market Effects of Trade: Evidence from Brazil. In *Making Globalization More Inclusive* (pp. 71–85). WTO. <https://doi.org/10.30875/fa88445c-en>
- Page, M. J., McKenzie, J. E., Bossuyt, P. M., Boutron, I., Hoffmann, T. C., Mulrow, C. D., Shamseer, L., Tetzlaff, J. M., Akl, E. A., Brennan, S. E., Chou, R., Glanville, J., Grimshaw, J. M., Hróbjartsson, A., Lalu, M. M., Li, T., Loder, E. W., Mayo-Wilson, E., McDonald, S., ... Moher, D. (2021). The PRISMA 2020 statement: An updated guideline for reporting systematic reviews. *BMJ*, 372, 1–9. <https://doi.org/10.1136/bmj.n71>
- Ramírez Pérez, D. (2022). Derechos laborales de creación: Un principio de protección laboral de la potencia. *Latin American Legal Studies*, 10(1), 163–225. <https://doi.org/10.15691/0719-9112Vol10n1a4>
- Rodríguez Morales, A. (2025). Derecho procesal laboral en acción: barreras de acceso durante el proceso judicial. Estudios de caso. *Revista Latinoamericana de Derecho Social*, e20056. <https://doi.org/10.22201/ijj.24487899e.2026.42.20056>
- Rojo Torrecilla, E. (2023). Tiempo de trabajo. Descanso diario y descanso semanal: dos periodos de tiempo claramente diferenciados. *Revista de Jurisprudencia Laboral*. https://doi.org/10.55104/RJL_00421
- Secretaría General OEA. (1969). *Convención Americana sobre Derechos Humanos (Pacto de San José)*. <https://share.google/tE6vR1YnARyNChpwW>
- Silva, D. F. da, & Silva, M. R. S. do N. (2020). Flexibilização laboral e direitos sociais: uma revisão integrativa e sistemática. *Revista Ibero-Americana de Humanidades, Ciências e Educação*, 6(5), 12–33. <https://doi.org/10.29327/211653.6.5-2>
- Sutrisno, A. (2025). The Evolution of Labor Law and Its Impact on Employment Policies. *Journal of Law and Regulation Governance*, 3(5), 208–214. <https://doi.org/10.57185/jlarg.v3i5.106>
- Taboada-Díaz, S. M., Miranda-Tello, M. S., & Peña-Armijos, G. E. (2024). Primacía de la realidad como expresión del derecho de defensa del trabajador. *Revista Metropolitana de Ciencias Aplicadas*, 7(1), 196–205. <https://doi.org/10.62452/5z1p4526>
- Vera Vélez, G. V., Garay Delgado, F. G., & Calle García, J. I. (2023). Reflexiones sobre la adopción en Ecuador: consideraciones constitucionales y legales. *Cuestiones Políticas*, 41(76), 792–807. <https://doi.org/10.46398/cuestpol.4176.47>
- Villacis-Carrera, V. A., & Pachano-Zurita, A. C. (2023). El despido ineficaz respecto a las mujeres embarazadas en la legislación ecuatoriana. *Revista Metropolitana de Ciencias Aplicadas*, 6(2), 265–273. <https://doi.org/10.62452/ex9n7f04>
- Vinueza Ochoa, N. V., Barcos Arias, I. F., & Arreaga Farias, G. K. (2021). La vulneración del derecho al trabajo por la reducción de la jornada laboral establecida en el artículo 20 de la Ley Humanitaria. *Dilemas Contemporáneos: Educación, Política y Valores*. <https://doi.org/10.46377/dilemas.v8i.2698>