

Overview of Labor & Employment Law in **Latin America** 2014



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2014

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Argentina

This document provides employers with an outline of the current regulations and practices regarding employment, labor and social security in Argentina. These issues are highly regulated in several statutes; the most significant ones are mentioned below.

1. Hiring Alternatives

1.1 Regular Employment (Indefinite Term)

Pursuant to the Employment Contract Law No. 20,744 (“ECL”), the rule is that employment contracts are executed for an indefinite period of time. In practice, this is the most common alternative used by employers for hiring employees in Argentina.

Indefinite term contracts do not need to be executed in writing. It is not customary for employers to issue offer letters or employment contracts for hiring at an indefinite term. However, the written formality may be convenient for defining other issues of the contract.

Employers have the obligation to immediately register any and all employment relationships in a Special Payroll Book, which is subject to periodic control or supervision by the Ministry of Labor.

1.2 Trial Period

Pursuant to the ECL, unless otherwise agreed upon by parties (i.e., waiver of trial period), all indefinite term employment contracts are subject to a trial or test period.

During this period, the employer may terminate an employee without just cause, and without being liable for any severance payment, except for accruals such as salary corresponding to the employee’s working days, proportional 13th month salary, compensation related to proportional vacation, and mandatory severance pay in lieu of a prior 15-day termination notice if said notice has been omitted.

An employee may not be subject to more than one test or trial period with the same employer.

During said trial period, the employer and the employee must pay social security contributions.

1.3 Special Employment Contracts

Under special and extraordinary circumstances, employers can hire for a definite term. Employers have the burden of proving that the term is related to an extraordinary circumstance. Otherwise, the employment relationship will be governed by rules on indefinite term employment contract.

The alternatives for employers are as follows:

- (i) Fixed-term contracts: only available when the end of the term is certain. The minimum hiring period is one month and the maximum hiring period is five years.
- (ii) Contingent-term contracts: only available when the end of the contract is uncertain, but subject to the completion of a service or a specific work.

Upon the normal termination of these contracts (either by the lapse of its term or completion of the service or work), the employee will not be entitled to further payment and/or severance indemnity, unless (i) the fixed-term employment contract is executed for a period of over one year (in case of normal termination of a fixed-term contract exceeding a one-year term, the employee will be entitled to 50 percent of the regular severance payments payable to employees under an undetermined employment contract and who are terminated for no just cause); or (ii) either the fixed-term contract or the contingent-term contract is terminated for no just cause before the lapse of the term or the service or work is completed. When terminating for no just cause and in a relationship under a fixed-term contract or a contingent-term contract, the employee is entitled to the regular severance plus a

special compensation for damages, usually equal to the remuneration payable until the end of the term of the contract.

The total length of the relationship on a fixed-term basis may not exceed five years. The fixed-term employment contract may be subject to renewal. However, if more than one renewal is made, it would most likely be construed that the employer is mischaracterizing the form of hiring.

1.4 Internships

The internship is a special alternative for training purposes. Internships are not considered employment and are, therefore, exempt from social security contributions. Internship contracts are available only to students. Employers must enter into an agreement with an educational institution (e.g., a university), establishing an internship program to be performed at the employers' premises. The internship has a minimum term of two months and a maximum term of 12 months, which may be extended once for six additional months. The work schedule may not exceed 20 hours per week.

2. Work Hours

The ECL and the Working Hours Law No 11,544 provide for a work limit of eight hours per day and 48 hours per week. A regular working schedule would consist, therefore, of an equal distribution of six working days or eight hours per day (Monday through Saturday). However, under Executive Order No. 16,115/33, the employer may prescribe a schedule with an unequal distribution of the 48 working hours, provided that the working day should not exceed nine hours.

The ceiling fixed by the regulations is a matter of public policy, which means that individual or collective bargaining agreements may provide for a more convenient schedule for the worker (e.g., a limit of 36 hours), but not otherwise.

No employee is allowed to work overtime in excess of 30 hours per month or 200 hours per year. In addition, between the end of one working day and the beginning of another, there must be a resting period of not less than 12 hours. Violation of such rules may trigger the imposition of fines.

Regular employees who work overtime during weekdays (i.e., Mondays through Saturdays, 1 p.m.) are entitled to an additional 50 percent payment based on the hourly salary rate. If the employees work overtime on national holidays or during the weekend, after Saturday, 1:00 p.m., they are entitled to an additional 100 percent payment. The team and shift working system is excluded from the overtime system described above.

Directors and managers are not subject to mandatory rules regarding working hours. In other words, directors and managers are not subject to any specific schedule and are not paid overtime compensation.

3. Leaves

3.1 Leaves of Absence

The Employment Contract Law prescribes the following general rules regarding paid leave of absence:

- (i) Birth of employee's child: two calendar days
- (ii) Marriage: 10 calendar days
- (iii) Death of the spouse or concubine, children, father or mother: three calendar days
- (iv) Death of a brother/sister: one calendar day
- (v) Examination at a high school or university: two calendar days per examination, with a maximum of 10 calendar days per year

Employers can freely extend the leaves of absence. In addition, collective bargaining agreements may grant additional days of leave.

3.2 Accidents and Diseases Not Related to Work

The Employment Contract Law also provides for a specific regime for leave of absence due to accidents or diseases not related to work. Employees are entitled to paid leave due to occupation-related accidents or diseases up to a three-month period, when seniority does not exceed five years; and up to a six-month period, when seniority exceeds five years. Since certain employees may have family responsibilities (i.e., under aged children), the period during which those employees are entitled to payment may be extended to six or 12 months.

Upon the expiration of the paid leave, if an employee is not physically or mentally fit to return to work, then the employer must keep the employee's position for at least one year without further compensation.

Upon the expiration of that one-year waiting period, if the employment relationship is not reestablished, either of the parties may terminate the relationship, without giving the employee any right to severance indemnity.

If total disability of the work capacity is certified, the employee shall be entitled to a severance payment as if he were dismissed for no just cause. If the disability is not absolute, the employer must provide the employee with a task in accordance with his work capacity, or pay a severance payment as though he was dismissed for no just cause.

3.3 Vacations

Employees are entitled to a minimum and continued period of paid annual vacations of:

- (i) 14 calendar days when seniority does not exceed five years;

- (ii) 21 calendar days when seniority is between five and 10 years;
- (iii) calendar days when seniority is between 10 and 20 years; and
- (iv) 35 days when seniority exceeds 20 years.

Employers may freely extend the vacations of their employees. Employers must grant the vacations between the 1 October and 30 April of the following year. The date on which the vacations of employees begin must be made known by the employer with a 45-day prior written notice. Should the employer fail to inform the employees of the date on which their vacation begins, the latter may notify the employer in writing of the date on which they will take their respective vacations. In such case, the vacations must end before 31 May.

Failure to take vacations may not be compensated, unless upon termination of the employment relationship.

Employees may add only up to a third of the period of vacations to which they are entitled to the vacations of the subsequent year. Thus, employees who fail to take their vacations in a given year may only accumulate up to a third of such vacations and their right to enjoy the remaining vacation period on the subsequent year will not be enforceable.

3.4 Holidays

Argentine law provides for 16 national holidays, including touristic holidays already decided by the Government (i.e., January 1st; March 3 and 4, March 24, April 2, April 18 -Good Friday-, May 1 and 2, May 25, June 20, July 9, December 8, December 25 and December 26).

The law further provides that some defined holidays are to be granted on a Monday or Friday. In addition, in certain holidays, the Government may also extend the term with one additional day for

touristic purposes. Finally, from time to time, Congress also establishes a certain date as a holiday to remember a historical event.

Finally, the law also authorizes employees to take off as a paid leave due to religious reasons.

Employees are paid on national holidays, even if they do not work on these days. However, if employees do work on national holidays, they are entitled to an additional 100 percent compensation based on their regular hourly rate.

In addition, certain holidays may be granted to the employees at the employer's sole discretion (for example, Holy Thursday).

4. Salaries and Benefits

4.1 Minimum Salaries

Employers and employees are free to grant other types of compensation such as base and variable compensation, bonuses, stock purchase, stock options, fringe benefits, etc. However, certain limits apply: they may not give salaries below the minimum wage fixed by the government. According to the last resolution number 4/2013 of the National Council on Employment, Productivity and the minimum wage (*Consejo Nacional Del Empleo, La Productividad y El Salario Mnimo, Vital y Movil*) the minimum wage currently amounts to ARS 3,600 (ARS 18 per hour).

Salaries must be at least equal to the ones foreseen by the employee's category at the salary scales of the collective bargaining agreement applicable to the employer's duties and tasks.

Salaries should not be given on a discriminatory basis and the rule "equal pay for equal job" applies.

4.2 Thirteenth Month Salary

The Employment Contract Law says employees are entitled to receive, on top of their salaries for each calendar year, an additional monthly salary (13th month salary). This 13th month salary is payable in two semi-annual installments, which are due on 30 June and 31 December.

The amount of each installment is equal to one-half of the highest remuneration paid during the corresponding semester.

4.3 Bonuses

There is no legal restriction on employers paying, at any time, any bonus to their employees. Note that “extraordinary bonuses” (e.g., bonuses paid after “X” years of service to the company that would not be repeated in the employee’s working life) paid on a single occasion during the employment relationship, may be exempt from social security contributions.

Repetitive bonuses granted at the employers’ sole discretion (i.e., without objective basis) generate an acquired right in favor of the employee. Thus, employees may demand the payment of these bonuses as part of their regular salary.

4.4 Stock Purchases, Stock Options and Profit-Sharing Plans

Under Argentine law, there is no legal obligation for employers to offer to their employees any type of incentive plan like stock purchase, stock option, profit sharing, etc.

In addition, there is no limitation on said plans offered by employers to their employees. The benefits that employees receive through the said plans would be, in principle, of a remunerative nature. Thus, these payments are subject to social security contributions and income taxes.

In September 2010, a bill was presented in Congress regarding profit sharing as part of the employee’s total compensation. This bill states that 10 percent of the company’s profit would be distributed within

the employees. Currently, this bill is under analysis and internal debate in Congress.

4.5 Fringe Benefits

In principle, all benefits are considered part of the salary and subject to social security contributions.

However, Law No. 24,700 provides that certain fringe benefits are not considered salaries and therefore are not subject to such contributions. The law created two groups of fringe benefits: (i) benefits of a non-remunerative nature, not subject to social security taxes; and (ii) benefits of a non-remunerative nature which are subject to a special social security contribution.

These two groups of fringe benefits are not salaries and should not be taken into account when estimating severance payments.

The health and medical coverage is a benefit paid through the social security system. This coverage and its payment are mandatory. However, employers may hire additional coverage, which is not considered remuneration. However, the court's recent decision has considered that this benefit is part of the salary.

As regards the provisions for housing, educational assistance or the personal use of a car for employees and/or their families, employers must treat the economic value of such benefits as remuneration, subject to social security contributions.

4.5.1 Non-Remunerative Fringe Benefits

Non-remunerative fringe benefits include the following:

- Employers' cafeteria services
- Reimbursement for medical and dental services and medicine expenses, duly evidenced by receipts issued by licensed physicians and pharmacies

- Provisions for work clothes and other items (such as equipment) to be used exclusively at the workplace
- Reimbursement for child care and nursery expenses, evidenced by receipts, and incurred by workers with children of up to six years of age
- Provisions for school supplies, school uniforms, and toys for the employees' children
- Training or specialization courses
- Payments for properly-documented funeral expenses to funeral homes or insurance companies
- Withdrawals made by managing partners of limited partnerships from the tax year's earnings that are properly accounted for in the balance sheets
- Reimbursements for expenses without receipts, related to the use of a vehicle owned by the company or by the employee, calculated and based on distance traveled, within a set range, or those reimbursements that are declared deductible in the future by the General Tax Authority
- Travel expenses of salesmen, evidenced by receipts, and the reimbursements for car expenses under the same conditions as prescribed above
- Use of housing owned by the employer, located in neighborhoods or premises surrounding the workplace, or leases in cases where access to housing is very difficult.

The aforementioned social benefits cannot be granted to employees in substitution for or to account for their remuneration.

5. Termination of Employment

5.1 Outline

Under the ECL, in general, the employer and/or the employee may terminate their contract by mutual agreement, upon the employee's resignation, employer's dismissal with or without just cause, employee's death or total disability, employee's retirement, employer's bankruptcy or by expiration of a fixed term of employment mutually agreed upon.

Except for the case of union representatives and workers' council representatives (in which a judicial procedure is required in order to terminate them for just cause), employers are legally allowed to terminate any employment contract, at any time and for no just cause, which termination is also known as unfair dismissal. In such a case, the employer must pay severance to the employee.

One of the instances where the employer has just cause for terminating employment is when the employee commits a serious offense against the employer. A serious offense may include theft of employer's goods, seriously insulting a superior, lack of loyalty, insubordination, and continuous lack of punctuality and attendance, etc. The activities that may be considered offensive or prejudicial to the employer are evaluated on a case-by-case basis, and determined in accordance with general principles of law and legal precedents. The employer must provide the employee with a written explanation of the cause of termination. The employee can challenge the reason for termination in court in a judicial action in which the employer bears the burden of proof.

The employees may also terminate the employment contract for just cause. Just cause is a serious offense that prevents the relationship from continuing. Moreover, the discharge from employment in which the employees terminate the contract for cause is called "indirect dismissal" (constructive termination).

When an employee is dismissed for just cause or resigns, the employer only has to pay the accruals to said terminated employee (i.e., the salary owed on account of the days worked in the month of termination; plus accrued proportional vacations and accrued 13th month salary), as described below. The employer does not have to pay any severance.

Employers may be able to reduce the amount of the mandatory severance pay based on seniority by proving “*force majeure* circumstances” (i.e., any circumstances beyond the employer’s control such as natural disasters or acts of government). Lay-offs must be in order of seniority and usually must comply with a special procedure before the labor authorities in the presence of the union, whereby the employer must provide evidence of the critical situation. Judges are very strict in the application of this exception.

As explained below, when the employment is terminated due to the death of an employee or to *force majeure*, then the employee’s legal heirs or the employee himself or herself is entitled to a reduced mandatory severance pay based on seniority plus the rest of the items of the severance.

In all cases, employers are free to make additional payments to the terminated or resigning employees over the minimum and mandatory severances. These additional payments are termination bonuses subject to income tax withholdings, but exempted from social security contributions, since they are considered extraordinary and exceptional (i.e., only upon termination of employment contract).

In certain cases, an employee may be entitled to additional compensation. Some examples of the cases in which an employee might be entitled to said compensation follows: breach of a fixed-term employment contract; employees protected due to certain maternity needs, pregnancies or wedding rites; an employee who has been improperly registered in the payroll book; or an employee who has suffered as a result of discrimination.

5.2 Notice Provisions

Employers have the obligation to give prior notice of termination to employees who are dismissed for no just cause, in accordance with the following guidelines:

- (a) Employees whose seniority is less than three months must receive a prior termination notice 15 days in advance of their dismissal.
- (b) Employees whose seniority ranges from three months to five years must receive the termination notice one month in advance of their dismissal.
- (c) Employees whose seniority exceeds five years must receive the termination notice two months in advance of their dismissal.

Employees must give their employers a termination notice 15 days in advance. The notice must always be given in writing.

If employers provide said notice, employees are entitled, during the aforementioned term, to receive a paid daily license of two working hours (which may be accumulated in one or more working days) in order to look for another job.

Should no prior notice of termination be given, then employers must pay the terminated employee in lieu of such omitted notice. This payment is the net of social security contributions and withholdings.

5.3 Termination Payments

We describe herein the legal structure of the severance in the case of termination without just cause (unfair dismissal) or total disability:

Accrued:

- (i) Salary (accrued portion of salary)
- (ii) Proportional vacations

(iii) Proportional 13th month mandatory salary (“SAC”)

Termination penalties:

- (i) Mandatory severance pay in lieu of prior termination notice, including completion of the month
- (ii) Mandatory severance pay based on seniority

When employment is terminated due to the employee’s death, employer’s bankruptcy, *force majeure* or lack of or reduction of employer’s activities (alien to the employer), the employer must pay a reduced mandatory severance pay based on seniority. Employees are entitled to 50 percent of the mandatory severance pay based on seniority which they will receive under the usual terms of termination without just cause.

For purposes of calculating the payments described below, certain permanent or repeated fringe benefits must also be taken into account (except as otherwise indicated by law).

Employers must pay the severance within four working days of the termination date. In case of malicious delay in honoring the severance, employers could be ordered to pay an aggravated interest rate by the judge plus an equivalent aggravated special severance as mentioned in 5.4 below. The following is a description of each item of the statutory severance packages:

- (i) Accrued Salary

The employer must pay the terminated employee’s salary for the days worked in the month in which the termination occurs.

This payment is subject to income tax and social security contributions, and withholdings.

(ii) Proportional Vacation Payment

Employees are entitled to a minimum and continued period of paid annual vacation of 14 calendar days when seniority does not exceed five years; 21 calendar days when seniority is between five and 10 years; 28 calendar days when seniority is between 10 and 20 years; and 35 calendar days when seniority exceeds 20 years.

Employees are entitled to the payment for the proportional accrued vacation during the year. The said payment must be paid upon termination of employment. The following formula is applied to calculate the compensation for proportional accrued vacation:

$$\frac{\text{Monthly salary}}{25 \text{ days}} \times \frac{\text{Days of worked in the year}}{365 \text{ days}} \times \text{Days of vacation according to seniority}$$

Further, employers must pay an additional 8.33 percent as a portion of statutory 13th month salary on this payment.

This payment is not subject to social security contributions or withholdings, but is subject to income tax withholding.

(iii) Thirteenth Month Mandatory Salary (“SAC”).

In each calendar year, employees are entitled to said SAC, which is equivalent to one-twelfth of the total amount earned by the employee during such year.

This SAC is payable in two semi-annual installments due on 30 June and 31 December.

The amount of each installment is equal to one-half, equivalent to 8.33 percent, of the highest remuneration paid (including all benefits) during the corresponding semester, and is to be considered as additional remuneration for the services rendered during such period.

The employees must receive the accrued part of this payment at the time of termination of their employment.

This payment is subject to tax, social security contributions and withholdings.

(iv) Mandatory Severance Pay in Lieu of Prior Termination Notice

As explained above, employers must give prior termination notice in writing to their employees. Absence of notice entitles the employees to claim the following payment:

- (a) Employees with less than three months of seniority are entitled to one-half of the employee's monthly salary
- (b) Employees who have between three months and five years of seniority should be compensated with one monthly salary
- (c) Employees who have more than five years of seniority should be compensated with two monthly salaries.

In addition, employers must also pay the salary for the days remaining in the month in which the termination occurs.

Finally, the employer must also pay an additional 8.33 percent, as the portion of the statutory 13th month salary on this payment.

This payment is not subject to social security contributions or withholdings, but is subject to income tax withholding.

(v) Mandatory Severance Pay based on Seniority

Employers must also pay accrued seniority for unfair dismissal. The ECL rules that this payment should be made by computing one gross highest monthly and normal salary for each year of service or fraction thereof (in excess of three months).

For purposes of calculating this compensation, the highest monthly and normal salary of the last year has a legal ceiling (cap). It may not exceed three times the average of all the remuneration contemplated in the applicable collective bargaining agreement. If more than one

collective bargaining agreement is applicable to the activity of the employer, the one most favorable to the employee shall be applied. This cap is applicable for unionized and non-unionized employees. In no event may the mandatory severance pay based on seniority be lower than one actual gross monthly salary.

However, the Supreme Court of Justice issued an important precedent in September 2004. Although in our legal system, the court rulings do not constitute law, courts shall most likely follow this precedent. In the case “*Vizzoti, Carlos A. v. AMSA S.A. re. dismissal*,” the Supreme Court of Justice set a new criterion for the calculation of the basic salary taken into account when estimating the Mandatory Severance Pay based on Seniority. Pursuant to this ruling, the cap may not reduce more than 33 percent of the basic salary to be factored for severance based on seniority. Therefore, the salary with a reasonable cap would be 67 percent of the highest monthly and regular salary earned by the employee during the last year of employment. This capped basic salary must be multiplied by each year of service or fraction thereof (in excess of three months).

Furthermore, the Supreme Court of Justice of the Buenos Aires province has ruled that employers who terminate employment for no cause within the Buenos Aires province must also pay 8.33 percent as 13th month salary at this amount.

5.4 Additional Payment Under Special Circumstances

The following cases may trigger payments in addition to the normal and regular severance described above:

- (i) Traveling Salesmen
- (ii) Breach of a fixed-term employment contract
- (iii) Employees protected due to certain maternity needs, pregnancy, or wedding rites
- (iv) Union representatives

- (v) Non-registered employees
- (vi) Discrimination against employees
- (vii) Delayed severance pay
- (viii) Failure to provide employment certificates
- (ix) Social Security contributions

We describe these cases below which add payments to the normal and regular severance described above.

- (i) Traveling Salesmen

In case of termination of traveling salesmen for whatever reason, pursuant to Law No. 14,546, the employer must pay an additional compensation for the clientele. This special compensation is only due to those traveling salesmen whose seniority exceeds one year.

In these instances, the employer must pay 25 percent as calculated on the aggregate amount resulting from adding the mandatory severance pay in lieu of prior termination notice and the mandatory severance pay based on seniority described above.

- (ii) Breach of a fixed-term employment contract

In case of the usual termination of a fixed-term employment contract exceeding a one-year term, the employee will be entitled to 50 percent of the usual mandatory severance pay based on seniority and under an indefinite-term employment. This ruling is applicable to employees who are terminated without just cause.

Upon the normal termination of the contract by expiration of its term, the employee will not be entitled to further payment and/or severance, unless: (a) the fixed-term employment contract is executed for a period of over one year; or (b) either the fixed-term contract or the contingent-term contract is terminated for no just cause before the

lapse of the term or the completion of the service or work, respectively (breach of contract).

In case the employer breaches the contract for no just cause, an employee hired for an undetermined term will be entitled to the regular severance, plus damages usually prescribed as the remaining salary until the end of the term of the contract.

(iii) Employees protected due to certain maternity needs, pregnancy, or wedding rites

As regards employers who dismiss for no just cause during the pregnancy or birth protection period, the ECL sets forth a presumption that the termination is due to the pregnancy or birth reasons, when dismissal is executed during the term of 7.5 months before or after childbirth, as long as the woman provides the employer with effective notice regarding the pregnancy and/or childbirth.

The ECL provides a special compensation for the new mother when she resigns once the three-month maternity leave expires. In this case, she will be entitled to 25 percent of the mandatory severance pay based on seniority.

The ECL also provides for special protection of the married couple. The law sets forth a presumption that the termination is due to the marriage when the dismissal is without just cause during the term of three months before or six months after the marriage, as long as the employee provides the employer with effective notice about the date they were married. The courts have ruled that this presumption applies to women and that men are entitled to protection as long as they provide conclusive evidence that they have been discriminated against for this reason.

For these cases, the special severance payment consists of 13 monthly salaries (i.e., salaries of one year plus the 13th month salary, considering the highest monthly and normal salary).

(iv) Union Representatives

According to the Union Law No. 23,551, employers can neither discharge workers' council representatives nor change these working conditions without their consent.

A special judicial procedure must be followed in order to sanction or terminate a representative for no just cause. The Union Law grants the workers' council representative the choice, when employers sanction them or dismiss them without following the special judicial procedure; to request reinstatement by means of interim measures, or to request special compensation for damages, equal to the salaries corresponding to the remaining term of representation plus one-year salary.

(v) Non-registered Employees

The National Employment Law No. 24,013 and the Tax Evasion and Prevention Law No. 25,345 rule in favor of additional compensations in case employers fail to register the relationship in the mandatory labor books.

Said special compensations are granted when: 1) the employee demands his or her registration to their employer prior to his or her termination; 2) the employee sends the copy of said demand to the National Tax Authority ("AFIP") not after the term of 24 business hours after having requested it from the employer. Therefore, the fines set forth in sections 8, 9 and 10 of Law No. 24,013 may only be enforced whenever the employee has previously fulfilled both requirements (the demand to the employer and the notice to the AFIP). Moreover, the employer shall be exempt from paying the fixed compensations, provided he or she answers and wholly fulfills said demand within 30 days.

According to Section 8, employers who fail to register the existence of the employment relationship shall pay 25 percent of all accrued remuneration during the employment relationship but under no circumstances shall pay before 25 December 1989. Under no

circumstance shall this compensation be lower than three times the best regular and habitual monthly salary of the employee.

According to Section 9, employers who fail to register the real date of hiring and register a latter one shall pay 25 percent of all accrued remuneration within the hiring date and the actual registration date, but under no circumstances shall pay before 25 December 1989.

According to Section 10, employers who fail to register the actual salary and register a lower one shall pay 25 percent of all non-registered and accrued remuneration during the employment relationship, but under no circumstances shall pay before 25 December 1989.

In addition, Section 15 rules that if the employee is being terminated for any reason, whatsoever, two years after his or her demand of registration, the employer would also have to pay the terminated employee an additional 100 percent of the regular mandatory severance pay based on seniority paid to the employee upon his or her dismissal without just cause.

Finally, in the case of employees who do not demand their registration during the employment relationship, and whose employment relationships are not duly registered in the labor books at the time of their respective dismissals, Law 25,323 sets forth special compensation equivalent to an additional 100 percent of the regular mandatory severance pay based on seniority paid to employees upon their dismissal without just cause.

(vi) Discrimination against Employees

According to the Anti-Discrimination Law No. 23,592, those employees discriminated against on the grounds of race, religion, nationality, ideology, political or union affiliation, sex, economic status, social condition and/or physical characteristics may request their reinstatement or any other precautionary action to withdraw the effect of the discriminatory act or to cease its performance. The

affected employee may file this petition under Section 43 of the National Constitution, which provides for a summary proceeding that guarantees constitutional rights.

Under the provisions of the Anti-Discrimination Law, the adversely affected employee may also claim for a compensation for pain and suffering (or emotional distress) and material damages (lost wages).

In addition, and in accordance to the provisions of Law 23,592, under the ECL, all discriminated employees are entitled to receive their salaries that should have been earned, or to terminate the employment contract and claim the regular severance from their employers, as an indirect dismissal.

Employees could claim for additional compensation based on tort rules. Under these Civil Code provisions, employees may claim compensatory damages for pain, suffering and emotional distress. Employees have the burden of proving (i) the damage and (ii) their employer's liability. There is no statutory ceiling to said compensation, and there have not been many cases brought forth in our courts for the recovery of damages.

Notwithstanding the foregoing, additional compensation for pain and suffering, and material damages due to discriminatory practice may actually be sought according to Law 23,592.

There have not been a significant number of judicial cases brought forth to the Argentine labor courts for discrimination, reinstatement and/or recovery of damages. Rather, most of these cases are associated with wrongful dismissals. Moreover, there is no legal precedent related to discrimination during the hiring process.

(vii) Delayed severance pay

Pursuant to the ECL, employers should pay the severance within four (4) working days as of the termination date.

Employees are entitled to an aggravated interest rate in case of an employer's deliberate delay in honoring the pertinent severance. The courts may impose this penalty.

Law No. 25,323 establishes that when the employer who has been conclusively urged by the employee to pay severance (i.e., mandatory severance pay in lieu of prior termination notice and mandatory severance pay based on seniority), refuses to make such payment and therefore obligates the employee to bring legal actions or any other prior proceedings to compel the employer to pay them, said compensations shall be increased to 50 percent.

(viii) Failure to provide employment certificates

Upon termination of the labor relationship, the employer has 30 calendar days to give two certificates to the employee: the Work Certificate and the Certificate of Services and Remunerations. Should the employer fail to provide said certificates within the term of two working days, the employee may request the delivery thereof.

Employer's failure to comply with said request shall make him liable for compensation to the employee equivalent to three times the employee's highest monthly and normal salary of the last year or during the term of his or her services.

This compensation shall have to be paid without prejudice to any other penalty that may be fixed by the competent judicial authority to cease said negative conduct.

(ix) Social Security contributions

Law No. 25,345 added a new section (No. 132 bis) to the ECL regarding the employer's duty to withhold certain amount from the employee's salary and make the pertinent deposit with the Federal Tax Authority and the Labor Union (if appropriate). All withholdings must be fully deposited by the time of termination of the labor relationship.

Should the employer fail to do so, either totally or partially, as of that date onwards and until he effectively makes such payment, the employer must pay the affected employee an amount equivalent to his or her last monthly salary.

In order for the penalties to be applied, the employee must notify the employer, and the employer has 30 days from the receipt of the notification to comply with the obligation of paying the amounts withheld, the interest incurred on these amounts, and the penalties to the pertinent authorities.

5.5 Separation Agreements, Waivers and Releases

Dismissed employees are not obligated to visit the labor authority to sign payment agreements with a release clause or a waiver in order to collect their severance package, except when an item or amount being paid may later on become a disputed issue.

Such waivers and/or releases executed between employees and their employers related to disputed rights shall be valid and enforceable only if signed before government officials of the labor authority (i.e., Ministry of Labor) and approved by such authority. Their execution is highly recommendable.

Mutual separation agreements are conducted and executed by signing before a notary or a labor authority. The labor authority does not approve such agreements because there is no actual settlement of disputed rights, so therefore, the release clause is unenforceable. The agreements usually state that the amount paid can be allocated for the payment of any outstanding debt or claim, and most courts have accepted this clause.

6. Collective Bargaining Agreements

Collective bargaining agreements are compulsory to industrial or commercial activities.

Unless a special company collective bargaining agreement is reached with a union representing the company's main activity, the applicable agreement shall be the collective bargaining agreement of the activity, entered into by and between the union and the chamber of employers which represent the workers and employers of such activity, respectively.

Collective bargaining agreements usually regulate issues such as workers' territory, salary scales, salary items (e.g., productivity, assistance, etc.), worker categories, workplace conditions, fringe benefits, leaves of absence, and union representation in the company.

Certain collective bargaining agreements set forth compulsory contributions for employers and/or compulsory withholdings from employees' salaries, in order to finance specific union objectives, such as promotion of culture and tourism, maintenance of retreat places, etc.

7. Life Insurance

Employers must hire and pay the premium for a collective life insurance policy in favor of their employees. As from January 2011, the minimum coverage per employee is ARS12,000 and the monthly premium paid by the employer is ARS0.205 per each ARS1,000 insured.

Collective bargaining agreements may also request additional employee's life insurance.

8. Workers' Compensation

The amended Workers' Compensation Law No. 24,557 provides for a general framework of compensations payable to employees who suffer as a result of an accident or illness related to the job. *In itinere* accidents (accidents on the way to or back from the workplace) are also covered.

According to the Workers' Compensation Law No. 24,557, employers must hire workers' compensation insurance with companies particularly created for this purpose. *Aseguradora de Riesgos del Trabajo* ("ART") employers may freely choose any ART duly registered.

ART must advise the insured on the prevention of labor risks, supervise their insured prevention policy, provide medical attention to employees who suffer as a result of an accident or illness related to the job, and pay the special compensation due thereto.

The employers' obligations include paying for the premium and complying with the Hygiene and Safety Law 19,587.

- (a) The Law provides for compensations in cash and in services or goods: (a) Employment risks to be compensated by ART in cash are: temporary disability, partial permanent disability (up to 66 percent disability), total disability (66 percent or more disability) and death.
- (b) Employment risks to be compensated by ART with services or goods are: medical and pharmaceutical assistance, prosthesis, rehabilitation, employment training for relocation, and burial services.

Under the amended Worker's Compensation Law, either the ART or the employer will, within fifteen days of being served of the employees death, partial or total disability due to an accident or illness related to their job, notify the employee of the compensation he/she is entitled to under the current legal system. As from then, the

employees will have the opportunity to choose either between accepting the compensation they were informed they were entitled to, or to pursue legal action based on civil law. Both responsibility systems (i.e. civil law or that set forth by the amended Worker's Compensation Law) are not cumulative.

Currently, there are no precedents whatsoever which hold the amended Worker's Compensation Law to be unconstitutional, given that it was recently passed.

However, regarding the Worker's Compensation Law prior to its amendment, the Supreme Court of Justice held in the case "*Aquino, Isacio v. Cargo Servicios Industriales S.A.*," dated September 2004, that the restriction or prohibition to filing legal actions based on civil law is unconstitutional because it deprives employees from having total compensation for their damage. As a consequence of this precedent, employers are liable to pay damages in excess of the amounts paid by the ART.

A recent resolution of the National Superintendence of Insurance Companies established a new voluntary insurance coverage for employers in order to cover adverse civil liabilities arising from employment accidents or professional illness that exceed the amount of money that the employee would receive pursuant to the Workers' Compensation Law, in accordance with the agreement that the insured party would have in force with the labor risks insurer.

9. Medical Coverage

Law No. 23,660 provides for mandatory health and medical coverage provided by special health medical organizations named *Obras Sociales*.

These organizations are public institutions administered by unions or management organizations. *Obras Sociales* administered by unions provide health and medical coverage to ordinary employees and workers (whether affiliated to their union or not). *Obras Sociales*

administered by management organizations provide health and medical coverage to employees of hierarchical positions. Some of these management organizations hire the services of private health and medical institutions.

Obras Sociales are supported through a 3 percent employees' contribution and 6 percent employers' contribution, both calculated on the employee's gross monthly salary.

10. Retirement and Pension

According to the Retirement and Pension Law No 24,241, all employees working in Argentina must be covered by the Argentine social security system. The Law provides that employees be duly registered with social security authorities.

In December 2008, the Retirement and Pension Law No. 24,241 was substantially changed by Law 26,425, which eliminated the capital-based retirement system (alternative that implied enrolling in privately-managed pension companies named "*Administradoras de fondos de jubilaciones y pensiones*" or "AFJP") and unified all retirements under the so-called "*Sistema Integrado Previsional Argentino*" or "SIPA," a public system administered by the state pension agency ("ANSeS").

Social security contributions finance the retirement benefits, the disability pension and the death benefit. The employees who retire with SIPA are entitled to an earnings-related retirement pension (i.e., the amount of the pension depends on their earnings level during employment).

In general terms, the social security system provides for the payment of retirement benefits to men who are 65 years of age and women aged 60. Nevertheless, Executive Order 1306/00 provides women an option to continue working until they are 65 years old. In order to obtain retirement payments, retired employees must submit evidence of having made social security contributions for the last 30 years.

An exception is made by law 25,994, which provides an early retirement benefit to unemployed people, available for men who reach 60 years old and to women aged 55. In both cases, in order to obtain retirement payments, retired employees must submit evidence of having made social security contributions for the last 30 years.

There is no limitation on additional pension benefits granted by employers to their employees.

11. Social Security Contributions

Under Argentine social security regulations, employers and employees must pay social security contributions. Independent workers are also subject to social security obligations.

11.1 Contributions in general

Contributions to the social security system are in accordance with this chart:

Concept	Employees' Contribution	Employers' Contribution	
	SIPA (in %)	Commerce and services that invoice more than ARS48 million (in %)	Remaining activities (in %)
Retirement and Pension (Law 24,241)	11.00	12.71	10.17
Medical Benefits for Retired Employees (Law 19,032)	3.00	1.62	1.50

Concept	Employees' Contribution	Employers' Contribution	
	SIPA (in %)	Commerce and services that invoice more than ARS48 million (in %)	Remaining activities (in %)
Family Allowances (Law 24,714)	---	5.56	4.44
Unemployment Fund (Law 24,013)	---	1.11	0.89
Public Health Insurer (Law 23,660)			
Medical Coverage (Laws 23,660 and 23,661)	3.00	6.00	6.00
TOTAL	17.00	27.00	23.00

Employees' salaries are subject to social security payments. Both employers and employees must contribute to the social security system. Employers must pay their contributions and must also withhold the employees' contributions from their salaries. Currently, employers' contributions depend on their activity and turnover amount: 27 percent if the employer is engaged in the provision of services or in commercial activities and the invoiced amount exceeds ARS 111.900.000; and 23 percent for the rest of the employers.

ART (workers' compensation or a Labor Risk Insurance Company) premium is not included in the abovementioned contribution rates.

Only employers must pay for it. This premium is agreed with the pertinent ART and depends on the activity of the employer. It is usually an average of 3 percent of the payroll.

Employees' contributions to the retirement system amount to 17 percent, including retirement fund, medical benefits for retired employees, healthcare insurance and medical coverage.

For purposes of calculating the social security contributions, there are "legal ceilings" or "caps" (maximum amounts) to be applied to the employee's gross monthly salary. The portion of the employee's monthly salary exceeding the cap is not subject to social security contributions.

The ceiling to calculate the employee's contribution to the retirement fund, medical benefits for retired employees, healthcare insurance and medical coverage is ARS31,167 per month.

The cap to calculate the employers' contribution for ART is also ARS31,167. For purposes of calculating any other employer's social security contribution, no legal ceiling applies.

11.2 Contributions for Directors

The Retirement and Pension Law treats directors of corporations as independent workers for social security purposes.

Directors must contribute as independent workers. The amount of the contribution depends on the annual income:

- (i) Incomes less than ARS15,000, the contribution amounts to ARS1,023
- (ii) Incomes over ARS15,000 and less than ARS30,000, the contribution amounts to ARS1,637; and
- (iii) Incomes over than ARS30,000, the contribution amounts to ARS2,250

Directors who perform administrative or technical services on a regular basis and receive instructions from the company, in exchange for compensation, are considered “Director-Employees.” These Director-Employees must be treated as employees for employment purposes (i.e., they are to receive a salary and all employee benefits, and must be registered in the Mandatory Payroll Book). However, according to the Retirement and Pension Law, Director-Employees must make their social security contributions as independent workers, and employers are not obligated to pay contributions. Usually, employers bear the cost of such contribution.

Director-Employees may voluntarily pay their contributions as employees and, in such case, employers also have to pay their social security contributions, for the amounts paid as salary. In light of the foregoing, Director-Employees must register themselves as independent workers and make the mandatory payments in accordance with their category. Likewise, Director-Employees should express whether or not they are willing to make their social security payments as employees. If they decide to pay social security as employees, both employers and employees shall be subject to regular contributions applicable to employees and directors, and must, in addition, make their contributions as independent workers.

Brazil

1. Introduction

The Federal Constitution, enacted in 1988, contains an entire chapter dealing with “social rights” (the employees’ rights), which elevates rights such as maternity and paternity leaves, annual paid vacations and several other rights to the constitutional level.

The provisions of the Federal Constitution and of the Labor Code, as well as all the other regulations in force today, apply, in principle, to all employees. The primary labor regulations in force in Brazil are: (1) the 1988 Federal Constitution; (2) the Labor Code; (3) Administrative Ruling No. 3.214/78, issued by the Ministry of Labor, which regulates health and safety matters; and (4) specific laws and rulings that apply to particular cases, such as Law No. 11.788/08 which regulates internships, and Law which regulates the work of Brazilians outside Brazil.

Collective employment relationship is not usual in Brazil.

The Labor Code contemplates two general types of employment contracts: for a definite and for an indefinite term. As further described below, employment agreements are generally in force for an indefinite term.

According to Article 3 of the Labor Code, an employee is an individual who (a) provides continuous services to an employer; (b) under the orders of the latter; or (c) for compensation. If these conditions are present, an employment relationship is likely to be recognized. In Brazil, the employment relationship results from the factual circumstances and not from what may be written in an agreement executed between the parties since the Labor Law adopts the “Principle of Reality.”

2. Mandatory Employee Benefits

The Federal Constitution and the Labor Code provide for a series of minimum benefits that must be granted by the employer to its employees throughout the employment relationship. Such minimum benefits are the following:

2.1 Minimum Wage

The federal government is responsible for setting forth the minimum wage that should be paid to the employees. No employee in Brazil shall receive less than the minimum wage. The minimum wage shall be reviewed and adjusted every year.

As of January 2014, employees in Brazil are entitled to a minimum wage of BRL724.00 per month (equivalent to BRL24.13 per day and BRL3.30 per hour).

Additionally, each category of workers (e.g., salesman, drivers, doctors, etc.) sets forth a professional minimum wage, which shall not be lower than the minimum wage set forth by the federal government. Wage rates set by local labor unions are typically higher than the general aforementioned wage rate.

The states may also establish a local minimum wage by law.

2.2 Maximum Hours / Overtime Pay

Regular working hours are limited to eight hours per day and 44 hours per week. This means that if the employees work six full days in a week, the daily working hours should be limited to seven hours and 20 minutes per day. On the other hand, if the employees work only five days in a week, the daily working hours could be extended to eight hours and 48 minutes, if agreed with the Labor Union. The parties may agree to shorter working hours.

According to the Labor Code, the employees' regular work schedule may be increased by overtime hours. However, overtime hours cannot exceed the legal limit of two hours per day, building up the limit of 10 hours per day as the maximum work schedule allowed.

Overtime work during business days requires a minimum payment of 50 percent of the regular rate. Work on Sundays and holidays requires a permit from the Ministry of Labor and a minimum payment of 100 percent of the regular rate. Collective bargaining agreement may specify higher add-ons for overtime hours.

2.3 Vacation Days and Vacation Premium

In Brazil, every employee is entitled to an annual 30 calendar days' vacation, in addition to the holidays occurring during the year. The employee's vacation right is acquired after a year of continuous employment. The vacation must be taken in the course of 12 months following the anniversary date of employment. If the employee does not take vacation in due time, the company must pay the respective compensation in double.

The Federal Constitution also provides that employers must pay an additional one-third of the monthly compensation as vacation bonus. This payment must be made before the vacation is taken.

2.4 Paid Holidays

The following are the legal paid holidays that must be observed. As mentioned above, an employee required to work on any of these holidays must be paid at the rate of at least 100 percent of his or her normal wage.

- New Year's Day (1 January)
- Carnival (a movable holiday)
- Easter (a movable holiday)

- Martyr's Day (21 April)
- Labor Day (1 May)
- Corpus Christi (a movable holiday)
- Brazilian Independence Day (7 September)
- Patron Saint of Brazil (12 October)
- All Souls' Day (2 November)
- Proclamation of the Republic Day (15 November)
- Christmas Day (25 December)

In addition, there are also paid state holidays (e.g., São Paulo State Revolution of 1932 every 9 July) and municipal holidays (e.g., anniversary of the city of São Paulo every 25 January; anniversary of the city of Rio de Janeiro every 20 January and Black Conscious day every 20 November).

2.5 Christmas Bonus (13th month)

The constitution also provides that all employers must pay the Christmas bonus, which corresponds to one extra salary per year. This payment shall be made in two installments: the first installment shall be paid between February and November and the second installment shall be paid on or before 20 December of each year. The Christmas bonus shall be paid based not on the base salary but on the employee's entire remuneration; hence, it shall include the usual overtime and bonuses.

2.6 Profit Sharing

Law No. 10,101 of 19 December 2000 regulates the employees' share in the company's profits or results as an instrument to integrate the capital and the workforce, and as production incentive.

All company employees shall be entitled to participate in the profit-sharing plan and the company shall renegotiate the content of the profit-sharing plan every year with the labor union.

Profit sharing does not replace or complement the employees' compensation, nor is it a basis for any labor or social security charges, as long as the profit-sharing agreement complies with the requirements of Law 10,101/2000. However, it is subject to withholding income tax from the payment made to employees.

Law No. 10,101 does not set forth strict rules for the calculation of the amounts payable to the employees, but provides that health and safety matters can not be considered goals to be achieved in the PLR plan. However, the negotiation instrument executed with the union shall set forth clear and objective rules to establish the material participation rights and procedural rules, including mechanisms to evaluate the information related to the accomplishment of the agreed goals, frequency of the distribution, terms of validity and frequency of review of the agreement.

The Superior Labor Court issued Precedent No. 390 (that relates specifically to profit-sharing payments), which provides that employees who rendered services and contributed to the results achieved by the company should receive their incentive payments, even if the employment agreement was terminated before the actual payment date.

As of 2013, there are also some new and reduced income tax rates applicable to profit sharing payments, which benefit the employees.

2.7 Training

Although there are no specific laws in this regard, all employers shall provide appropriate training to its employees.

2.8 Health and Safety

The Labor Code contains a chapter that deals exclusively with health and safety matters. In addition, the Labor Ministry published Administrative Ruling No. 3,214/1978, which sets forth specific provisions in connection with, among other matters, the prevention of and protection from accidents, personnel safety equipment, building safety requirements, transportation and handling of materials, hazardous work conditions and environmental contamination.

In accordance with Administrative Ruling No. 3,214/1978, employers must establish an internal accident prevention committee in every establishment. This committee is made up of representatives of the employer and the employees, and must hold periodic meetings to prevent on-the-job accidents.

2.9 Paid Maternity Leave

Female employees in Brazil are entitled to a 120-day paid maternity leave. The payment of salary during the maternity leave is made by the employer, who may offset the corresponding amount against the social security charges.

Otherwise, according to the Labor Code, an employer may not dismiss pregnant employees from the confirmation date of the pregnancy up to no less than five months following the birth. The purpose of the Labor Code is to protect the pregnant employee and her child, granting the employee the right to continue working during the pregnancy period, to consequently sustain herself and her child.

Employers may, at its own discretion, extend the maternity leave to another 60 days, by entering a special program created by Law No. 11,770/2008. In this case, the company may deduct from its income tax the additional expenses arising from this extension.

2.10 Social Security

See item related to this matter below.

3. Voluntary Employee Benefits

Employers may voluntarily enhance the minimum benefits required by law or provide additional benefits at their discretion. In Brazil, employers usually provide healthcare plans and life insurance policies to their employees.

Before Law No. 10,243 of 19 June 2001, the financial result of all the fringe benefits granted to the employees should be included in their compensation for the purpose of calculating labor rights. This law excluded the most usual fringe benefits granted to the employees (i.e., health insurance, pension fund, life insurance, education and the like) from their remuneration.

4. Social Security Benefits

According to the Social Security Legislation, all employees working in Brazil must be covered by the *Instituto Nacional do Seguro Social* (INSS) or the national social security system.

Both employers and employees must pay social security contributions. Self-employed workers are also subject to social security obligations.

Employees can also choose to contribute to a private pension plan, to increase the compensation to be received by the INSS.

To be able to retire from employment in Brazil, an employee must fulfill some requirements. First, an employee may retire based on the length of contribution to the social security system: 30 years for women and 35 years for men. Second, it is possible to retire based on age: women must be 60 years old and men, 65 years old. Finally, it is important to mention that the age-based retirement is only possible after 15 years of contribution.

The contribution to the social security system must observe the following charts:

Employees' social security contributions paid over remuneration:

1.	Up to BRL1,317.07	8% of salary
2.	From BRL1,317.08 to BRL2.195.12	9% of salary
3.	From BRL 2,195.13 to BRL 4,390.24	11% of salary
4.	More than BRL4,390.24	Fixed value of BRL482.93

Employer's social security contributions paid over payroll:

1.	Social Security Contribution – INSS	20%
2.	Labor Accident Contribution – SAT	from 1% to 3% (*)
3.	Third parties contribution, for instance:	from 2.70 to 5.80%
	Education Contribution	2.50%
	INCRA Contribution	0.2%
	SENAI Contribution	1.20%
	SESI Contribution	1.50%
	SEBRAE Contribution	0.60%

() Note that according to Decrees n °.6, 042/2007 and 6,957/2009, the SAT rate shall be multiplied by the so-called Accident Prevention Factor (FAP), which varies from 0.5 to 2.00 depending on the risk involved in the company's activities.*

The main charge to be collected by the company to the social security institute is the basic social security contribution at a rate of 20 percent, upon the totality of remuneration paid to employees and self-employed workers.

In addition, employers must also pay, upon the remuneration paid solely to employees, the Labor Accident Contribution (“SAT”) and other social contributions to specific entities (“third parties”) provided for by law (such as SESI, SENAI, SESC, SENAC SEBRAE and INCRA contributions).

The rate of the other social contributions mentioned above will depend on the company’s main activity.

The employees’ contribution shall be levied according to the compensation amount, based on specific brackets and varying from 8 percent to 11 percent (up to a maximum limit of BRL482.93). Employers must withhold the employees’ contribution and pay it to the social security authorities along with their contribution as employers.

5. Severance Fund - The FGTS System

In Brazil, all employees are entitled to a Severance Fund. The employer deposits 8 percent of the employee’s monthly compensation in a special bank account for the employee at the Federal Savings Bank. This fund constitutes the Severance Fund (“FGTS”). This fund may be withdrawn by the employee upon retirement. It can also be withdrawn on certain very special cases, such as in the case of the acquisition of a house. And it could be withdrawn in particular, upon the termination without cause of the employee’s employment at employer’s discretion.

In addition to the monthly contribution, in case of termination without cause at employer’s discretion, the company must pay a fine of 40 percent of all existing amounts in the employee’s FGTS account on

the termination date, plus another 10 percent over the FGTS balance, as social contributions that are paid to the government.

In August 2012, the Brazilian Federal Senate approved a bill which extinguishes the employers' obligation (referred above) to pay the 10 percent over the FGTS in case of termination without cause. The bill is now under discussion in order to be passed into law. If approved, the law will be valid only in 2014

In principle, only registered employees can participate in the FGTS system. However, the companies may elect, at their own discretion, to deposit the FGTS contributions on behalf of non-employee officers who hold managerial positions.

6. Types of Employment Contracts

6.1 Overview

According to the Labor Code, an employee is an individual who renders services on a continuous basis to an employer, under the orders of the latter, for compensation. These conditions being present, an employment relationship is likely to be recognized.

In Labor Law, substance is more important than form. As a consequence, a written employment agreement is not required to evidence such relationship, since it can result from mere verbal arrangements or even from implied circumstances.

The Labor Code and other regulations provide for employment conditions all at the minimum, leaving to written employment agreements specific matters such as any form of special compensation, fringe benefits, confidentiality and non-compete covenants.

6.2 Individual Employment Contracts for an Indefinite Term

Employment agreements are generally in force for an indefinite term. Employees can only be hired for a fixed term in very few special circumstances, as further described below.

As indicated above, the execution of a written employment agreement is not required by Brazilian law and is rather used as a matter of convenience to deal with certain specific matters. In Brazil, the admission of an employee requires only the filling out of certain blank spaces in the employee's Employment Booklet (*Carteira de Trabalho*, similar to a passport), to identify the employer, the date of admission, salary (generally per month) and function to be discharged by the employee. Similar annotations should be made on the company's books.

It is not a common practice in Brazil to extend offer letters to new employees. A new employee is hired based on the terms of the annotations made in his or her Employment Booklet (as indicated above) or in the employment agreement, if any. Brazilian laws do not forbid the use of offer letters, however. Foreign companies entering into the Brazilian market normally use these instruments.

If any of the provisions of the employment agreement is considered illegal, void, or unenforceable by any court of competent jurisdiction, such provision is usually deemed to have no force and effect. The illegality or unenforceability of such provision does not impair the enforceability of any other provision of the agreement. In other words, the remainder of the agreement shall continue to be valid.

As to contract modification practices, per Article 468 of the Labor Code, any change in the employment conditions (i) shall require the employee's express consent in writing; and (ii) must not cause any loss (financial or otherwise) to him. Please note that this article represents a true principle of the labor laws, and evidences its protective nature.

6.3 Individual Employment Contracts for a Definite Term

As mentioned above, employment agreements are generally in force for an indefinite term. The Labor Code foresees very specific situations when the parties can execute an individual employment contract for a defined term, namely: (i) services whose nature or time

frame justifies setting forth a term; (ii) transitory business activities; and (iii) trial labor contracts.

Employers have the burden of proof of the circumstances that authorize the execution of the employment contract for a definite term. Otherwise, the employment relationship will be governed under indefinite-term employment contract rules, which are generally more favorable to the employee.

Generally, fixed-term agreements may not exceed two years, and may only be renewed once. A trial agreement may not exceed 90 days.

7. Termination of Employment Relationship

7.1 Overview

Termination of an employment relationship in Brazil is a rather formal matter. Both the employee and the company may terminate the employment relationship at any time for any reason, with or without cause. The concept of at-will employment is not recognized in Brazil.

Labor Law sets forth a clear distinction between termination with cause and termination without cause. Termination is only considered with cause in case of severe fault by the employee.

7.2 Termination of fixed-term agreements

If the employer prematurely terminates a fixed-term employment agreement without cause, the employee is entitled to receive an indemnification equivalent to half of the salaries for the outstanding period of the employment agreement and the severance pay, such as balance of the monthly salary, salary related to untaken vacation accrued by one-third of the employee's salary and proportional Christmas bonus. Employer and employee, however, can agree that the legal effects of the agreement for a fixed term are to be those of an agreement for an indefinite term. In such case, the agreement for a fixed term could be terminated at any moment by any party by serving prior notice, and the employee would only be entitled to receive the

payments as if the employment agreement has been executed for an indefinite term.

7.3 Termination of indefinite term agreement without cause

The termination of an employee, without cause, should be preceded by a prior written notice. A 30-day prior notice term is required whenever the termination is carried out at the first anniversary of the employment agreement. After the first anniversary, the employee will be entitled to three additional days per completed year worked up to a cap of 60 days (i.e., the prior notice may totalize 90 days).

Failure by the employer to give such notice will entail the payment of an indemnity corresponding to one month's compensation to the employee. Since at times, the presence of an employee under notice in the company's premises may not be desirable or convenient, some companies prefer to pay an extra one-month compensation (the "severance notice indemnity") and terminate the employment immediately. In this case, the employment relationship is deemed extended for one month for the purpose of calculating the severance payment.

Whether for cause or without cause, the termination of an employment contract requires the payment of certain severance amounts and the signing of a Termination Form describing all payments made, in the presence of a representative of the employee's union or of the Labor Department. The calculation of such payment is based on the total monthly compensation of the employee, i.e., his or her base salary plus the financial results of some fringe benefits extended by the company, such as bonuses, car and housing allowances, and the like.

The routine severance payment in case of termination without cause is basically as follows:

- a. Salary due until the date of termination

- b. Prior notice or payment in lieu thereof. If the employee is required to work under notice, the employee must have a two-hour reduction in his or her working hours or a seven-day leave. In both cases, the employer must pay the full salary.
- c. Accrued and/or pro rata vacation equal to one month's salary per year of employment. In Brazil, employees are entitled to a 30-day paid vacation each year. When termination occurs before concluding a full year, the vacation time must be calculated pro rata the number of months the employee has worked.
- d. Pro rata Christmas bonus equal to one-twelfth of the employee's monthly salary per month of employment, counting from the relevant 1 January to the termination date
- e. Fifty percent of the balance existing in the employee's Severance Fund bank account on the termination date or the amount that should exist on the termination date, in case the employee has already collected amounts deposited in the fund

Please note that in Brazil, termination is generally done without cause. For collective terminations in lay-offs the union must be involved as defined by labor courts (i) if there is a defined cause (e.g., crises, insolvency, etc.); or (ii) if there is no specific cause, the number of termination exceeds the regular turn over of personnel.

7.4 Termination of indefinite term agreements with cause

As mentioned above, Labor Law sets forth a clear distinction between termination with cause and termination without cause. Termination is only considered with cause in the following cases:

- a. Performance of a dishonest act
- b. Lack of self-restraint and improper conduct

- c. Performance of regular business transactions, without permission of the employer, when such transactions are in competition with the employer's business and are detrimental to the employee's activities
- d. Criminal conviction of the employee, upon a final and an unappealable decision, provided that the enforcement of the penalty has not been suspended
- e. Sloth by the employee in the performance of his or her duties
- f. Usual drunkenness or drunkenness during working hours
- g. Violation of the company's secrets
- h. Act of insubordination
- i. Abandonment of employment
- j. Act injurious to the honor or reputation of any person, performed during working hours, and any physical violence performed under the same conditions, except in case of legitimate defense
- k. Act injurious to the honor or reputation of the employer or the employee's superiors, as well as any physical violence to them, except in case of legitimate defense
- l. Constant gambling
- m. Acts against the national security duly evidenced by administrative investigation

Please note that in Brazil, employers are not allowed to terminate employees with cause due to bad performance. Depending on the circumstances, bad performance could be characterized as item (e) above, which is one of the most difficult acts of the above list to be proven in court.

The routine severance payments in case of termination with cause are the following:

- a. Salary due until the date of termination
- b. Accrued and proportional vacation equal to one month's salary per year of employment

7.5 Seniority Premium

This premium is due according to the employee's length of service to a certain company. This benefit is not legally mandatory, but is generally foreseen by the company's policy or by a collective bargaining agreement, in which case, must granted by the employer. Usually, the time period required for qualifying an employee for such benefit ranges between three to five years of service, and the premium corresponds to 3 percent to 5 percent of the worker's monthly compensation.

7.6 Employees occupying a "Position of Trust"

According to the Labor Code, there is a special type of employee known as "employee occupying a position of trust." This type of employee generally performs managerial duties and has more authority compared to the other regular employees. Please note that this status depends on the actual duties performed by the employee, not necessarily on the employee's title.

The Labor Code defines "employee with a position of trust" as an employee who has sufficient powers to bind the company as well as the officer or chief of the department in all cases, receiving compensation at least 40 percent higher than that of any other employee in the department.

The "employee occupying a position of trust" is not required to record his working hours in the company, and, thus, is not entitled to receive overtime payment.

8. Collective Labor Relations and Unions

8.1 Overview

In Brazil, employers and employees are necessarily represented by their respective unions on certain matters of collective employment relations.

Employees are free to organize professional and union associations but they cannot organize more than one association representing the same professionals in the same territorial base (i.e., the municipality).

8.2 Unions

The creation and activities of the unions for both employers and employees are dealt with in the Constitution of Brazil.

As mentioned above, employees are free to organize professional and union associations, but they cannot organize more than one association representing the same professionals in the same municipality. No specific number of workers is required to form a union.

In Brazil, unions are organized following business activities, such as commerce, metallurgy, chemicals and others. The association representing a given company shall be that of the main activity of the company.

Employers and employees must pay annual contributions to their respective unions. The employer's contribution is generally paid in January of each year, based on the number of employees and on the capital of the company. The employee's contribution is equivalent to a one-day salary, paid generally in March.

8.3 Collective Bargaining Agreement

The employers' association and the employees' union, representing a given business activity, negotiate annually the terms of a collective agreement dealing with salary raise due to inflation and several other

issues to be in force for a term of one year. If no agreement is possible, the parties can avail of the mediation by the labor department or the labor courts.

Collective bargaining agreements executed between employees' and employers' unions must be observed by the parties. Bargaining agreements generally set forth rights more beneficial to the employees than those set forth in the Labor Code.

8.4 Suspension of the Collective Agreement

In Brazil, once all the parties execute the collective bargaining agreement, only the labor court may suspend or declare it null and void. This may be requested by any of the parties or by the Public Labor District Attorney.

8.5 Termination of Collective Labor Relationship

As indicated above, collective relationship is not a practice in Brazil.

9. Strikes

9.1 Overview

The right to strike is constitutionally guaranteed. The workers must decide on the advisability of exercising it and on the interests to be defended.

The Labor Law also defines which services or activities are essential. It is important to note that a union meeting is always required to vest the strike with legal effects, and that a "lockout" — suspension of the company's activities at the employer's request — is forbidden.

9.2 Strike Procedures

According to the Labor Law, the union is competent to declare the beginning of a strike. This is after the holding of the appropriate union meeting and complying with the other statutory requirements.

The following procedures must be observed in deciding to engage in a strike:

- Frustration of a collective bargaining negotiation between the parties. This means that it is only when they fail to reach an agreement that the union is allowed to proceed with a strike.
- The union must request for a meeting, according to its own regulations.
- All the parties involved - or to be affected - must be notified of the strike intention, at least 48 hours in advance.
- If the activities involve any threats to the community's basic needs, meaning those that are impossible to delay without jeopardizing the survival, health and safety of the citizens, a minimum percentage of such services must be guaranteed and provided.
- Upon receiving the strike notice, the Labor Court must schedule a meeting to try to obtain a settlement agreement between the parties. At this stage, the Labor Court may not decide on whether the strike is legal, but may only act as a mediator.
- If the parties fail to reach a settlement agreement, the Labor Court will rule. In case of abuse, if the employees refuse to go back to work, they will not be paid their salary. In case of damages, the responsible parties must be submitted to the penalties of the law.

Chile

The following is an overview of the various types of individual labor contracts contemplated by the Chilean Labor law, causes for termination of employment and employee entitlements to severance, as well as an analysis of collective labor relationships in Chile, including strike procedures.

1. Hiring and Employment Relationship

1.1 Types of Employees

The Chilean Labor Code recognizes two broad classes of employees: dependent workers (employees) and independent workers. This distinction is analogous to the United States distinction between an employee and an independent contractor. The Labor Code regulates the employment contracts of dependent workers but does not regulate those of independent workers.

1.2 Dependent Worker Contracts (Individual Labor Contracts)

A written labor contract is required for all dependent workers. The employment contract for a dependent worker, also known as an “individual labor contract” (*contrato individual de trabajo*), is defined by the Labor Code as “an agreement by which employer and worker commit themselves reciprocally, the latter to render personal services under dependence upon and subordination to the former, the former to pay a determined remuneration for these services.” The condition of “subordination” exists when the employer supervises the employee and controls such aspects of employment as the working hours and the methods of performing the work.

1.2.1 Duration of Contracts

Individual labor contracts for dependent workers are classified as to duration. The law recognizes three durational categories: (i) contracts of indefinite duration, (ii) contracts with a definite duration, and (iii) contracts for a particular task or service. Each is discussed below.

a. Contract of indefinite duration

A contract of indefinite duration, which is the most common form in Chile, does not specify a termination date. Such a contract may be terminated by either party, although termination by the employer is subject to legal restrictions described in the next section, including possible payment of a statutory indemnity based on the length of service.

b. Contract of definite duration

A contract of definite duration, by contrast, specifies a termination date and may not be unilaterally terminated without a statutorily recognized just cause. Chilean law does not permit the parties to stipulate to a term of employment for longer than one year, except in the case of managers and professionals, who may contract for up to two years. An employee who is terminated upon the expiration of a contract of definite duration is not entitled to a statutory severance indemnity based on length of service. An employee who is terminated without just cause before expiration of the contractual term is entitled to the balance of the full salary under the contract from the time of termination to the expiration of the specified term. If an employee under a contract of definite duration continues working after the expiration date with the employer's knowledge, the contract then becomes one of indefinite duration. Such an indefinite contract is also created upon the second renewal of a contract of definite duration or in the case of discontinuous services due to two or more contracts of definitive duration during the 12th month in a period of 15 months.

c. Contract for a specific task or service

A contract for a specific task or service ends upon the termination of the specific work covered by the contract. Under this type of contract, the employee is not entitled to any indemnity or compensation once the contract expires. Moreover, unlike employees hired under contracts in categories (i) and (ii), employees hired for a specific task or service are not entitled to engage in formal collective bargaining.

1.2.2 Form of Contract

The form of an individual labor contract is prescribed by the Labor Code, which requires that such a contract contain the following items:

- The date and place of the contract
- The identities of the parties, including the worker's nationality and date of birth
- A description of the nature of the services to be rendered and of the place in which the work is to be performed (for traveling employees, this should include the entire territory covered)
- A description of the amount, frequency, and form of payment to the employee
- The duration of the workday, except where the work is to be performed in shifts, in which case the employer's own internal regulations will govern
- The term of the contract
- Any other items agreed to by the parties

Like a union contract, a dependent labor contract may not waive any of the employee's minimum legal rights. The lack of a required item in the contract does not invalidate the contract, but can lead to the imposition of fines in certain circumstances. The absence of a required item can also make it difficult to establish the actual terms of employment in case of a dispute.

Although the Labor Code states that an individual labor contract must be in writing, the failure to put the contract in writing does not invalidate the contract or make it unenforceable. All that the law requires for an enforceable individual labor contract between an employer and an employee is a meeting of the minds on the terms and conditions of the employment. The requirement that the contract be

reduced to writing is intended to protect the employee and to preserve a record of the agreement in the event a labor dispute arises between the employer and the employee.

1.3 Independent Worker Contracts

Labor contracts for independent workers are considered to be outside the coverage of the Labor Code, as they involve independent workers rather than a dependent employment relationship. Independent worker contracts typically involve the performance of technical or professional services, services performed sporadically at the domicile of the person paying for the service, or services habitually performed in the home of the individual rendering the services or at some other place freely chosen by the individual. The key elements of an independent worker contract are the absence of dependence or subordination on the part of the individual performing services and the payment of a fee instead of a wage or salary.

1.4 Outsourcing and Temporary Employment

Chilean law establishes a clear difference in the nature and legal treatment of Outsourcing and Temporary Personnel Supply Services. Individuals rendering personal services on a periodical or permanent basis, who do not fall under these categories may be deemed as the company's direct employees (in relation with the company that receives the outsourcing or personnel supply services).

1.5 Hours per Week

Maximum work week is 45 hours with a maximum of 10 hours per day, including overtime. Shift systems may be approved where the work activity requires continuity of labor. Overtime carries a legal 50 percent premium over the hour-based salary. In any case, overtime may not exceed two hours per day. Pursuant to a recent amendment, employees remunerated on a daily basis are entitled to a continuous week compensation, consisting of a proportional compensation for Sundays and holidays, calculated on the base of weekly terms.

1.6 Remuneration

Employers must distribute 30 percent of profits to workers or pay an annual bonus of 25 percent of annual employee income, in the latter case up to a maximum of 4.75 times the minimum monthly wage (in sum, approximately USD 2,000 per annum).

1.7 Payment of full week for employees who received variable remunerations

Full week (*semana corrida*) is the benefit consisting of the right to receive remuneration for each Sunday and holiday not worked. The payable amount is equal to the average daily remuneration accrued within the corresponding week or month, as the case may be. The full week is applicable to all employees with a regular work week distributed in no less than five and no more than six days.

Before Law No. 20,281 (in force since January 2009), the benefit of the full week was established for employees with no right to a fixed monthly salary, remunerated exclusively on a daily basis. Pursuant to Law No. 20,281, the full-week benefit is now extended to those employees with salaries composed of a fixed monthly salary plus variable remunerations (partly fixed and partly variable amounts). In this case, for calculating the full-week benefit, only the variable portion of the remuneration must be considered.

In order to be considered for the calculation of the benefit, the variable remuneration must be primary, ordinary and received on a daily basis. According to the Labor Directorate, a variable remuneration is considered “daily” when it is accrued on a day-to-day basis for each worked day, regardless of its date of payment. On the other hand, a variable remuneration is considered primary and ordinary when it is frequent and sustainable on its own without depending on other remunerations. As a result, remunerations that may be deemed as accessory or extraordinary (e.g., an annual bonus, overtime, among others), must not be considered for the calculation. Regarding commissions, the Labor Directorate has ruled that commissions based

on collective achievements of the whole business or section should not be considered.

The mechanism for calculation of the full week is the following:

- All primary, ordinary and daily variable remunerations accrued by the worker in the corresponding week/month must be added.
- The result of said amount must be divided by the number of days in which the employee legally had to work in the corresponding period: week (five or six days) / month (20, 21, 22 or 23 days).

1.8 Social Security

Social security is mandatory in Chile and equals approximately 21 percent of gross monthly salaries, which the employer must deduct from the employee's remuneration, withhold and pay over to the corresponding social security and health insurance institutions.

The contributions referred as social security obligations are the following:

- Pension: 13 percent of the employee's monthly wage, to be contributed exclusively by the employee (maximum of 72.3 UF).¹
- Health: 7 percent of the employee's monthly wage, to be contributed exclusively by the employee
- Heavy work contribution: In case a certain position was to be deemed as risky in terms of ergonomic conditions, it could be qualified as "heavy work" by the National Ergonomic Commission ("*Comisión Ergonómica Nacional*"). In this case,

¹ The UF or *Unidad de Fomento* (Development Unit) is a monetary unit indexed daily to inflation by the Chilean government. As of February 2014, one UF is equivalent to approximately USD43).

the employer will be obliged to pay the employee holding the “heavy work” position a monthly contribution between 1 percent and 2 percent of the employee’s monthly wages. Also, the corresponding employee shall pay a monthly contribution between 1 percent and 2 percent of the employee’s monthly wage.

- Labor accident and occupational illnesses insurance: between 0.95 percent to 3.4 percent of the employee’s monthly wages, depending on the company’s risk rating, to be contributed exclusively by the employer.

For purposes of these contributions, the maximum salary subject to mandatory social security contributions is 72.3 UF (approximately USD 3,100).

- Unemployment Insurance: In case of employees hired under an indefinite term contract, the contribution is equivalent to 3 percent of the employee’s monthly wages, to be contributed both by the employer (2.4 percent) and by the employee (0.6 percent). In this case, 0.6 percent of the 2.4 percent effectively borne by the employer shall be allocated in the individual unemployment account. The remaining percentage of the employer’s contribution (0.8 percent) shall be allocated to a public “Unemployment Solidarity Fund.”

On the contrary, in case of employees hired under a fixed-term or task-basis employment contracts, the rate of this contribution is equivalent to 3 percent of the employee’s monthly wages. In this case, 2.8 percent of the 3 percent effectively borne by the employer shall be allocated in the unemployment individual account. The remaining percentage balance of the employer’s contribution (0.2 percent) shall be allocated in a public “Unemployment Solidarity Fund.”

For purposes of these contributions, the maximum salary subject to mandatory social security contributions is 108.5 UF (approximately USD 4,650).

Foreign individuals who work in Chile may be exempt from paying social security contributions in Chile, provided such individual is already registered in a social security system in his or her place of origin, granting coverage at least for disability, illness, pension and death, and if the employee evidences a capacity as a foreign “technician.” Besides, in order to obtain this exemption, the worker must declare this intention in the Chilean employment contract.

1.9 Taxes

Progressive rate with brackets ranging from 0-40 percent applied to the taxable amount, which allows very few deductions. The 40 percent rate applies to amounts paid in excess of approximately USD 10,800 per month.

1.10 Employment of Local Labor

Companies with more than 25 employees must employ staff including at least 85 percent Chileans or foreigners who are residents in Chile for five years or more. Specialized foreign technicians in Chile are excluded from this requirement.

2. Termination of Employment

The termination of employees is governed by the Labor Code. Each termination must be justified on one of the bases provided in the law, except that employees having authority to represent the employer (for example, managers, attorneys, and agents) and employees working in confidential capacities may be dismissed without cause. To the extent just cause is necessary for termination, an employee may not be terminated based on conduct not related to work or the workplace. In addition to the general statutory provisions regulating employment terminations, several classes of employees, including union officials,

pregnant women, and new mothers, enjoy special job-security protections.

As discussed below, depending on the circumstances of the termination, the terms of the labor contract, and the employee's length of service, an employer may or may not have to pay a severance indemnity to the terminated worker.

2.1 Termination With Indemnity

Except in certain circumstances identified in the Labor Code, a terminated employee is generally entitled to receive a sum of money, called a severance indemnity, from the employer.

If an employee working under an employment contract of definite duration is terminated without just cause before the expiration of the contractual term, the employee is entitled to payment of an amount equal to the full salary under the contract from the time of termination to the expiration of the contractual term.

For employees working under a contract of indefinite duration, the amount of the indemnity depends on the length of service.

The right to a severance indemnity arises if the employer terminates an individual labor contract that has been in place for more than one year based on the economic or other needs of the enterprise. Indemnity is also available to terminated employees who had authority to represent the employer or who served in confidential positions, even though such employees may be terminated without the employer having to state a cause.

In all of these cases, the employer must pay an indemnity equal to one month's salary for each year of service, up to a maximum indemnity of 11 months' pay. For purposes of calculating the indemnity, a fractional year of service greater than six months is counted as a full year. Employees hired before 14 August 1981, are entitled to an indemnity of one month's pay per year of service with no 11-month cap. The monthly salary on which the indemnity is based is limited to

90 UF (approximately USD3,860) by law, but may be increased by contract. Employees who may be entitled to a different indemnity under the terms of their contracts must choose between the contractual indemnity and the legal indemnity; double recovery is not permitted. Employers may negotiate payment of severance on an installment basis, including interest and adjustments, with the approval of the Labor Inspectorate. Breach of the agreement will entitle the employee to accelerate full payment of the severance.

a. Disputes

An employee who feels that his or her termination was not justified (i.e., not based on (1) the economic or other needs of the enterprise or (2) the employee's lack of ability, as discussed above, may sue the employer in the labor court. If the employee prevails, the employer must pay a surcharge of 30 to 100 percent over the normal indemnity as a penalty.

Before filing a claim for wrongful dismissal in the Labor Court, the discharged employee may assert the claim before the Labor Directorate, which ordinarily will attempt to conciliate the dispute. If the Labor Directorate finds a clear violation of law, it can fine the employer, but it has no jurisdiction to determine whether the employer breached the employment contract or to award damages to the discharged employee.

b. Notice

Employees terminated in situations requiring indemnity are entitled to 30 days' advance written notice of termination, or to an extra 30 days' pay in lieu thereof, in addition to any indemnity. Pay in lieu of notice is limited to an amount equal to 90 UF, however. If notice of termination is provided, a copy must be sent to the Labor Directorate.

c. Termination Settlement (“*Finiquito*”)

The termination settlement, or *Finiquito*, is a document providing notice of termination, the conditions of the same, the reasons for the termination, and the itemization of the social benefits to be received by the employee as part of the termination (certain compensation, indemnification for unjustified firing without prior notice, payment of proportional vacations, etc.). Although not a mandatory document, the *Finiquito* is the only legally binding way for the employer to prove the termination of the employment and the conditions under which the contract was terminated. If the *Finiquito* is duly signed and ratified by both parties before a notary public or before the labor authority, it constitutes irrefutable evidence of the parties’ obligations, preventing subsequent claims before the labor courts for something different than that contained in the *Finiquito*.

2.2 Substitute Indemnity

Through the AFP² system, Chilean law has developed a system of substitute indemnity, which is effectively a form of indemnity insurance. This indemnity is financed by monthly employer allocations of at least 4.11 percent of the employee’s monthly wage or salary, with the salary to which this percentage applies limited to 90 UF. Contributions to this fund can be made only by mutual, written agreement of an employer and an employee, and only between the employee’s sixth and 11th years of service. This indemnity is payable regardless of the reason for termination.

2.3 Termination Without Indemnity

Except as otherwise provided by contract, employment contracts terminate without indemnity by (1) mutual agreement; (2) the conclusion of the particular task covered by the contract; (3) *force majeure* (i.e., an unexpected and uncontrollable event, such as a

² *Administradoras de Fondos de Pensiones*, or Administrators of Pension Funds.

natural disaster); (4) the employee's death; (5) the expiration of an agreed-upon term, or (6) resignation.

Contracts may also be terminated by the employer without a right of indemnity when employees engage in the following misconduct: (1) immoral conduct, including sexual harassment, mobbing (2) destruction of the employer's property); (3) material noncompliance with contractual terms; (4) desertion of work; (5) unjustified absence, or (6) other serious misbehavior. When the contract is terminated because of the employee's alleged misbehavior, the employee may claim in court that this reason is false. If the employee prevails, the employer must pay the indemnity mentioned above plus a surcharge.

Please bear in mind that according to the new labor process currently in force, if a terminated employee sues the company claiming wrongful termination, the employer has to be in a position to prove the veracity of the facts stated in the termination letter and will not be allowed to claim in trial any different facts supporting the dismissal. As a result, the wording of such letter has acquired major importance.

2.4 Protection From Termination Under the Fiero

A legal doctrine called the "*fiero*," or "immunity privilege," protects some employees from termination of employment in certain circumstances, which include, among others, union officers, presidents of the hygiene and safety committee, pregnant employees and employees returning from maternity leave.

3. Labor Unions, Collective Bargaining and Strikes

3.1 Labor Unions and Industrial Relations

The National Constitution and the Labor Code guarantee the right to form labor organizations without employer or government interference. Membership in labor unions is voluntary. More than one union is permitted in the same workplace. Employees may belong to only one labor union for each job that they hold. Employees may not be required to join a union as a condition of employment. Laws

enacted during the military regime in Chile somewhat diluted the power of labor unions by restricting their ability to bargain collectively on an industry-wide or area-wide basis, but the trend of labor legislation in the 1990s has been to strengthen union bargaining power. Collective bargaining on an area-wide basis is an issue prompting bitter debate in the National Congress. As a practical matter, however, union power remains limited, and as of 1994, the percentage of non-agricultural workers represented by unions was a relatively small 16 percent. Union-represented employees are found primarily in mid-sized to large companies. In small companies, union representation is rare. Labor unions and labor relations are overseen by the Ministry of Labor and Social Security through the local Labor Inspectorates.

3.1.1 Purposes of Unions

Under Chilean law, the purposes of labor unions include the following:

- To provide mutual assistance to union members, to represent workers in collective bargaining
- To promote education and workplace security
- To monitor employer compliance with employment legislation and social security
- To provide various nonprofit services, including humanitarian services, for union members
- To represent workers in the exercise of their contractual rights

3.1.2 Types of Unions

Chilean law recognizes seven types of unions:

- Enterprise unions (all members are employees of the same employer)

- Inter-enterprise unions (members are employees of two or more employers)
- Unions of self-employed workers
- Unions of temporary workers
- Federations
- Confederations
- Workers' centrals

3.1.3 Formation of Unions

The unionization of employees in Chile is quite different from the process of unionization in the United States. Unlike unions in the United States, where a union is certified to represent all employees in a defined bargaining unit regardless of whether they are members of the union, in Chile, unions represent only those employees who are members. Thus, more than one union is permitted in the same workplace.

When a sufficient number of employees become members of a union at a particular company, a union is “formed” in that workplace and may negotiate with the employer for a collective labor contract covering its members.

- In companies with 50 or fewer employees, a union may be formed with at least eight employees, regardless of the percentage of employees represented.
- At companies with more than 50 employees, a union may be formed with at least 25 workers joining within one year of its creation, provided that this represents at least 10 percent of the employer’s workforce. When an employer maintains multiple places of business, a union may be formed with at least 25

workers at each site, provided they represent at least 30 percent of the employees at each location.

- In companies with 250 or more employees, a union may be formed regardless of the percentage of employees represented.

These numerical restrictions do not apply to inter-enterprise unions and unions of self-employed workers, which are formed when they have at least 25 members, regardless of where those employees are employed.

The required number of employees must undergo specific formalities contemplated under the law. The formation of a union is a matter left entirely to the discretion of employees. An employer may neither interfere with its employees' right to form and join a union nor require employees to form or join a particular union. Chilean law establishes a right on the part of each employee to join, refrain from joining, or withdraw membership from any union or labor organization, and membership in a union cannot be required as a condition of employment. A union may not engage in a strike or other economic pressure against an employer while organizing the employer's employees. If organizing efforts fail, neither the union nor the employees must wait for any prescribed period of time before attempting to organize employees at the establishment again.

The Labor Code does not provide a specific procedure by which an employer, an employee, or another union may challenge the formation of a union. The Labor Code does, however, authorize the Labor Inspectorate to object to the formation of a union during a 90-day period following the purported creation of the union.

3.1.4 Time for Performance of Union Business

a. Weekly Leave

Union directors are entitled to six hours of leave per week to perform union business. If the union has 250 or more members, the leave may

be increased to eight hours per week. The director's leave may accumulate within a calendar month.

b. Annual Leave

Union directors receive an additional week of leave each year for necessary union business. A director may also go on leave for anywhere between six months and the term of the contract if the union so decides in accordance with the union bylaws. A director of an inter-enterprise union may receive a leave of one month for collective bargaining. Directors of federations and confederations may receive leaves for the entire term of their mandate and for one month after its expiration.

c. Payment for Leave

Time spent on leave is considered hours worked, but the wages for these hours are paid by the union. While the employer must preserve the union director's job during leave, it may fulfill this obligation by giving the director an equivalent job upon return from leave.

3.1.5 Employment Security for Union Members and Officers

a. Employees Protected

The legal doctrine called the *fuero* protects some union members from termination of employment in certain circumstances. The *fuero* extends to the following:

- Candidates for a union director position, beginning from the time the election date is set until the election is completed, but not to exceed 15 days
- Union directors and directors of federations, confederations, and workers' centrals during their terms of office and for six months thereafter

- Employees involved in collective bargaining during the period starting 10 days before bargaining begins and ending 30 days after bargaining is completed
 - Staff delegates during their terms of office and for six months thereafter
- b. Wrongful Dismissal Based on Anti-Union Animus

In addition to increasing penalties for an unjustified dismissal generally, the 2001 amendments to the Labor Code also created a new legal claim for wrongful dismissal based on anti-union animus. Pursuant to these provisions, the worker may have the option of reinstatement or receiving an expanded severance payment. In the event a labor court determines that an employer unlawfully terminated an employee based on union animus, the employer may be ordered to pay the employee between three and 11 times his or her salary in addition to any severance otherwise due.

3.2 Employer Organizations

Employers may form their own organizations, also known as “craft associations” (*Asociaciones Gremiales*), for the purposes of undertaking common activities and providing mutual aid within the area of the employers’ commercial activity. Craft associations do not represent their members in collective bargaining with unions. Craft associations also may not engage in political or religious activity, but may represent their members in discussions with governmental agencies and the National Congress to promote economic and labor policies favorable to their members’ interests. Matters that a craft association may address include tax policies, import and export regulations, foreign currency policies, and labor laws. These organizations must register with the Ministry of Economy, Development, and Reconstruction (*Ministerio de Economía, Fomento y Reconstrucción*) and may also form federations and confederations.

3.3 Unfair Labor Practices

Chilean law identifies certain unlawful acts constituting unfair labor practices. Unfair labor practices include acts committed by unions and employees as well as those committed by employers. Charges of unfair labor practices are heard by the labor courts, which have the power to punish violators by imposing a fine. The Labor Directorate maintains a registry of unfair labor practice violators and periodically publishes a list of repeat offenders.

3.3.1 Unfair Labor Practices Committed by Employers

An employer commits an unfair labor practice if it:

- offers special payments or benefits to employees or exerts other pressure to prevent their joining a union or to disincentive the formation of a union;
- discriminates among workers for the purpose of discouraging union membership or requires an employee to join a union as a condition of employment;
- uses moral or physical coercion to induce an employee to join or resign from a labor union or if it interferes with free speech among union members;
- refuses to bargain with a certified union;
- refuses to provide certain financial necessary information to a union to facilitate bargaining;
- interferes with the establishment of a union by threatening to reduce wages or benefits or to close the facility, or to manipulate the number of employees in the work force to prevent or interfere with the formation or maintenance of a union; or

- interferes in a union's affairs, arbitrarily discriminates between labor unions, or requires an employee to join a union or to authorize wage deductions for union dues as a condition of employment.

Unfair labor practices may be sanctioned with fines that range from 10 to 150 Monthly Tax Units (1 MTU=USD 80). The labor authority also publishes a six-monthly list of companies that have incurred unfair labor practices.

3.3.2 Unfair Labor Practices by Unions and Employees

Unions or employees commit an unfair labor practice if they:

- conspire with an employer to help the employer commit an unfair practice;
- conspire with the employer to terminate or discriminate against an employee for nonpayment of union dues or fines, or if they exert pressure on an employer to perform any of these actions;
- use moral or physical coercion to induce an employee to join or resign from a labor union or if they interfere with free speech among union members;
- disclose an employer's confidential information to third parties; or
- interfere with an employer's right to choose its representatives for collective bargaining.

It is an unfair labor practice for a union to fine a union member for not obeying an unlawful union decision or for bringing charges against or testifying against the union. A union officer who ignores a member's complaint or claim also commits an unfair labor practice.

3.4 Collective Bargaining

3.4.1 The Duty to Bargain

Generally, an employer has a duty to bargain with any union of its employees that has met the legal requirements for establishing a union. However, employers who have been in operation for less than one year and employers with fewer than eight employees are exempted from collective bargaining. In addition, the following classes of employees are not entitled by law to engage in collective bargaining, although they may form or join a union:

- Apprentices
- Employees hired for a particular task
- Temporary employees

An employment contract may also exempt the following employees from bargaining, although they, too, may join or establish a union:

- Managerial employees
- Employees authorized to hire or fire employees
- Upper-level employees with decision-making authority as to policies or processes of production or commercialization

If the employment contract of an individual employed in one of these categories does not expressly exclude the individual from collective bargaining, the individual is presumed to be eligible to participate in and benefit from collective bargaining.

3.4.2 Subjects of Bargaining

In general, collective bargaining covers matters concerning compensation and working conditions. The parties may not negotiate any waiver or modification of the employees' minimum legal rights, nor may the parties negotiate limits on the hiring of non-union

workers. The parties may not negotiate limits on management's right to administer and organize the company, including the use of machinery and the various forms of production, nor may the parties negotiate any matters that are unrelated to the company. Union security clauses, such as provisions requiring union membership as a condition of employment or requiring employees to join the union within a certain time period after being hired, are not permitted.

3.4.3 Level of Bargaining

Although Chilean law generally restricts the scope of collective bargaining to a single employer and its unions, collective bargaining may take place on a multi-employer or multi-union level as agreed to by the parties. Collective bargaining negotiations between an employer and all of the unions or bargaining groups representing its employees take place at one time, unless the parties agree to separate negotiations. When multiple unions represent various groups of employees at an employer's establishment, the unions may choose to present a common proposal for a collective bargaining agreement to the employer, or they may present multiple proposals, each covering one or more of the unions or bargaining groups.

3.4.4 Bargaining Procedure

Formal collective bargaining, which may be carried out at the enterprise level or at multi-enterprise levels, is called regulated bargaining (*negociación reglada*) and is a highly-detailed procedure established by a statute. The collective bargaining process begins with the submission of a proposal for a collective contract (*contrato colectivo*)—as opposed to a collective agreement—by a union or a bargaining group. The Labor Code establishes a 45-day period for collective bargaining, and during this period, the employer is expected to respond to the initial proposal. If the employer does not respond at all within 20 days, it is deemed to have accepted the proposal. Any agreement that the parties reach becomes the exclusive contract between the parties and must remain in effect for at least two years. At any time during collective bargaining negotiations, the parties may agree to appoint a mediator to aid the negotiation process. Arbitration

is also available as a means by which parties to collective bargaining negotiations can resolve their differences and reach an agreement.

Informal or no regulated bargaining may be initiated at any time by the parties and is not regulated by Chile's formal bargaining statutes. Employees who are precluded from regulated collective bargaining (for example, temporary employees) can engage in a non-regulated collective bargaining, but this process is also available to all employees. When no regulated collective bargaining fails to result in an agreement, however, the employees may not lawfully engage in a strike. When no regulated collective bargaining is successful, the resulting agreement is called a "collective agreement" (*convenio colectivo*) and is governed by the same norms and formal requirements that apply to collective contracts established through regulated bargaining.

3.5 Strikes and Lockouts

3.5.1 Strikes

When the parties to regulate collective bargaining negotiations are unable to reach an agreement, the only economic weapon available to the employees is the strike. Any other activities the employees may undertake to pressure the employer into accepting their proposal (for example, picketing, work slowdowns, or secondary boycott activity) would be illegal. In no regulated bargaining, strikes are illegal.

A strike may not be called during the term of a collective contract. Consequently, a no-strike clause is superfluous in a collective contract. Even when no collective contract is in effect, a strike is legal only when it is called in furtherance of lawful regulated collective bargaining demands. Strikes in protest of unfair labor practices are unlawful at all times. A strike may be called only upon a majority vote of the union members or bargaining group, as the case may be.

A strike suspends the individual employment contracts of strikers and suspends both the striker's duty to work and the employer's duty to pay the strikers. Once a strike begins, the employer may hire

temporary replacement employees, provided that the employer's final offer to the union was timely made (that is, presented to the union at least seven days before the end of the 45-day negotiating period), was at least equal to the prior working conditions, and included a pay raise equal to at least 100 percent of the increase in the cost of living with future pay tied to increases in the Consumer Price Index. If the employer's offer does not meet these conditions, then the employer can hire temporary replacements only after the strike has gone on for 15 days. The parties to a strike may appoint an arbitrator at any time to settle their differences.

Once employees go on strike, they do not have an unfettered right to return to work at will. Instead, the law imposes restrictions on their individual ability to abandon the strike and return to work. If the employer complies with the rules governing replacement employees, the strikers may return to work 15 days after the strike begins. If the employer does not comply, the strikers may return to work 30 days after the strike begins or 15 days after the submission of the employer's final offer, whichever comes first. Strikers who return to work must do so under the terms of the employer's last offer. If more than 50 percent of the strikers return to work, the strike is terminated, and the remaining employees must also return within two days. If the remaining strikers fail to return to work within that time period, the employer may terminate them for abandoning their jobs, a reason that will disqualify the employees from receiving the statutorily-required severance indemnity.

Provided an employer complies with the rules governing replacement employees, including payment of the replacement fee referenced above, strikers may return to work 30 days after the strike commences.

3.5.2 Lockouts

A lockout is the employer's right to prohibit employee access to its premises once a strike has been declared and made effective. A lockout bans plant access not only to striking employees, but to all

employees in the plant other than the management, persons with the power to hire and discharge employees, and high-ranking personnel with decision-making authority over company policies and procedures. A lockout may be declared only if more than 50 percent of the employees at the affected location are on strike or if the strike threatens to endanger activities that are essential to safeguard the functioning of the business, regardless of the percentage of employees involved in the strike. A lockout suspends the collective or individual labor contract of the affected employees, but the employer must pay the pension and social security payments of all employees who are not on strike, and who are affected by the lockout. When a lockout occurs, it must terminate at the same time as the strike, or on a term that shall not exceed the 30th day after the strike began, whichever occurs first. Thus, if the strike continues after 30 days, the employer must terminate the lockout at the end of the 30-day period and reopen the plant. This situation rarely arises, however, because private-sector strikes in Chile seldom last more than 15 days.

3.6 Representation by entities other than unions

Employees who do not wish to form a union or belong to the same may nonetheless elect a representative, known as a “staff delegate.” The employees who wish to be represented by a staff delegate must fulfill the representational requirements applied to enterprise unions (i.e., number of employees and representative status) and must not be affiliated with any union. Like union directors, staff delegates serve two- to four-year terms and are the means of communication and negotiation between the represented employees and the employer. Staff delegates may also represent their workers before government labor authorities. Employees who elect a staff delegate must submit the delegate’s name to the employer, along with the names and signatures of all represented employees.

During their term of office, staff delegates receive the same employment protections afforded to union directors in relation to the *fuero*. The *fuero* covers staff delegates during their terms of office and for six months thereafter.

4. Labor Accidents, Occupational Illness and Workers' Compensation

4.1 General obligation of safety

The obligation of maintaining health and safety conditions relies on the employer. Accordingly, the employer shall adopt all the necessary measures to effectively protect the life and health of its employees and all employees that work in its offices (which includes contractor's employees). The breach of this obligation could be administratively sanctioned by the Labor Inspectorate with fines. Additionally, this infringement usually may be considered as a negative precedent against the employer in determining its potential civil responsibility in case of injuries, illnesses or death of employees as a consequence of labor accidents or occupational illnesses.

4.2 Coverage for labor accident and occupational illness

For the provision of benefits in relation to labor accidents and occupational illnesses, companies must be affiliated to an institution carrying coverage for such contingencies. This institution could be either private (Employers Mutualities or *Mutualidades de Empleadores*) or public (Labor Safety Institute or *Instituto de Seguridad Laboral*). Further, companies with at least 2,000 employees may self-insure against labor accidents and occupational illnesses if they meet certain requirements, including the maintenance of medical staff and services, the maintenance of permanent preventive activities and a hygiene and safety committee. Few companies pursue this option.

These institutions manage a workers' compensation fund pursuant to the Labor Accidents and Occupational Illnesses Statute.³ Employers are required to pay a basic monthly contribution at the rate of 0.95 percent of the employee's monthly salary, plus an additional and variable rate from 0 percent to 3.4 percent of the employee's monthly salary, depending on the effective risk level of the company.

³ Law No. 16,744 dated 1 February 1968.

Both contributions shall be borne by the employer and shall be paid to the respective institution for each employee. Therefore, the amounts associated to these mandatory contributions cannot be deducted from the employee's remuneration.

4.3 Accrual of benefits

From a labor standpoint, the concept of labor accident is interpreted very broadly in Chile. Employees are entitled to benefits for injuries sustained either at work or en route to or from work. Moreover, employees who serve on the board of a labor union and who are injured in the course of the union business are also considered to have been injured on the job. Likewise, both accidental injuries and those inflicted intentionally by co-workers or third parties in the workplace may constitute labor accidents.

Benefits are also available for occupational illnesses that cause disability or death. An occupational illness is contracted through the employee's profession or work. The government periodically issues a regulation identifying illnesses that are classified as occupational diseases. However, this is not a strict list, and employees may file claims based on illnesses that are not expressly included in the regulation. If an employee's disabling illness is found not to be an occupational illness by the public or private entity providing occupational illness coverage, the employee may nevertheless be entitled to disability benefits from the common health insurance program managed by the government or by a private entity ("FONASA"⁴ or "ISAPRE"⁵), but these benefits are often less than those available for occupational diseases.

⁴ FONASA is the popular name for the *Fondo Nacional de Salud*, a public health system.

⁵ ISAPRE is the popular name for the *Institución de Salud Previsional*, a private health system.

4.4 Coverage

Labor accidents and occupational illnesses are compensated by both medical and cash benefits.

- Medical benefits are extensive and include hospitalization, medical and dental care, pharmaceuticals, prostheses, travel expenses, and rehabilitation. These benefits are provided without charge to the individual by the applicable institute carrying the coverage until the individual is completely cured or otherwise free of the residual effects of the occupational injury or disease.
- Cash benefits depend upon the degree of disability, as measured by the decline in the victim's earning capacity. Employees with a temporary disability caused by an occupational injury or accident are entitled to a sickness payment for up to 52 weeks, and this benefit may be extended to an additional 52 weeks if necessary to provide the employee with better treatment or rehabilitation. Benefits for permanent disabilities range from lump-sum payouts in the case of lesser disabilities to a pension equal to 70 percent of the base salary for more serious cases (and even 100 percent if the employee requires another person's assistance to carry out the essential functions of living). Moreover, certain additional increases are granted if the employee has dependents, but pensions are capped according to the level of disability.

Colombia

1. Introduction

The labor regulatory frame in Colombia is composed of the following: (i) the Constitution (which sets forth the fundamental labor principles, rights and obligations it protects); (ii) the Substantive Labor Code and amendments thereto (which regulate matters such as individual employment agreements, mandatory social benefits, vacations, supplementary work, days of rest, union organizations, and collective bargains); (iii) the Social Security Regime (which regulates obligations related to affiliation and quotations to the social security system for health, pension and occupational risks); and (iv) regulations and decisions issued by the Ministry of Labor, the Constitutional Court and the labor courts, among others.

When incorporating a branch or subsidiary and hiring employees, the constituted society, as an employer, must abide by the following main rules and obligations.

2. Employment agreement

By means of an employment agreement, an individual agrees to render a personal service to another person or entity under the continued subordination of the latter, receiving for such service, an specific remuneration (salary).

Pursuant to our labor laws, there is an employment agreement, regardless of the name given thereto or to the stipulations included therein, in any relationship where the following three elements exist: (i) rendering of a personal service; (ii) payment of a remuneration/salary; and (iii) continued subordination and dependence of the person rendering the service to/on the beneficiary of the service, allowing the latter to give orders and instructions on how the work should be performed in terms of time, manner and place.

Usually, the first two elements concur, which leaves the subordination element as determinant of the existence of a labor relationship. Colombian labor law does not provide a legal definition of subordination; thus, circumstantial evidence will be taken into account when determining whether subordination is present or not in a relationship. Our labor courts have concluded the presence of subordination based on specific situations, such as: the individual goes every day to the same place, on a certain schedule, to render services; the individual has an office that is owned or paid for beneficiary of the services; the individual obtains reimbursement from the beneficiary for some expenses (e.g., telephone bills, transportation) or receives typical labor payments (e.g., commissions); and, with respect to foreign employees, the person keeps his condition as “employee” within the organization or the local company.

Employment agreements in Colombia can be classified and identified as follows:

In accordance to the form of the employment agreement:

- Oral. The parties must agree at least on: (i) the nature of the work and place of work performance; and (ii) the amount of remuneration.
- Written. All parties must sign on the agreement, with a copy executed for each party. The agreement should reflect the complete understanding of the parties. Additionally, there are certain provisions that are valid only if set forth in writing, such as provisions on the trial period, the so-called integral salary, and the duration of the agreement for a fixed rather than an indefinite term.

Pursuant to the term of the agreement:

- For the duration of a specific job -when the services should be rendered for a specific period in order to carry out period

required to carry out a certain task, which must be expressly determined.

- For a fixed term -when the employment agreement is entered into for a fixed term of duration. This kind of agreement must necessarily be entered into in writing. Its initial term of duration cannot exceed three years and, when executed for a fixed term inferior to one year, it may only be renewed three times for equal or inferior periods as the one initially agreed. In this case, the fourth renewal may only be agreed for a minimum term of one year.
- Indefinite term of duration - the one that does not stipulate a fixed period or whose duration is not tied to the specific task or project.

3. Salary and mandatory employee benefits

3.1 Minimum wage and salary arrangements

There is no legal provision establishing special salary levels, except for the minimum wage. However, it must exist equality basis in order to remunerate services rendered by equal employee in equal conditions.

No employee can earn less than one minimum legal monthly salary. For 2014, it is COP \$616.000 per month (approximately USD \$308).

Colombian labor law allows two types of salary arrangements:

- (i) The so-called traditional structure, under which salary and mandatory benefits are paid separately
- (ii) The so-called integral salary structure, under which mandatory benefits are already included pro rata in the monthly salary payments. Integral salary is only applicable for employees who earn more than 13 minimum legal salaries. It not only compensates ordinary services but also all social benefits,

allowances, overtime work, saved vacations, and whatever payment or benefit in money or in kind expressly identified in the agreement, which the employee would otherwise receive separately. Vacations and social security quotations accrued by employees are not included within the integral salary structure.

Employees with ordinary salary (traditional structure) are entitled to the following mandatory social benefits:

- Unemployment aid (“auxilio cesantía”)
- Interests on unemployment aid
- Semester bonus
- Vacation

The omission on payment of salary and social benefits can generate a delayed payment indemnity equivalent to one day of salary per day of delay for a period of 24 months. If payment is not performed after 24 months, moratorium interests shall apply at the maximum rate defined by government authorities. In addition, an employer that does not comply with the obligation of depositing the unemployment aid on a timely basis may be charged with a failure indemnity equivalent to one day of salary per day of delay, counted from 15 February of each calendar year up to the date of termination of employment or until the date of the deposit, whichever occurs first.

3.2 Maximum hours/overtime pay

The general rule is that the ordinary working hours are those agreed upon by the parties, or in absence thereof, the legal maximum established, that is, eight hours per day or 48 hours per week.

Ordinary working hours may be agreed during daytime (any time between 6:01 a.m. and 10:00 p.m.) or during nighttime (any time between 10:01 p.m. and 6:00 a.m.). Nighttime working hours generate the payment to the employees of statutory surcharges.

Supplementary or overtime work is the one exceeding the ordinary working hours of the company and, in all cases, the one exceeding the legal maximum working hours. In no case overtime work - daily or nightly - must exceed two daily hours and 12 weekly hours.

Employers must have an authorization from the Ministry of Labor to have their employees working overtime.

Supplementary work, daily or nightly, must be remunerated with a special surcharge, defined in the Colombian labor legislation.

There are special employees not subject to ordinary working hours nor to the legal maximum working hours, such as management and trust personnel, that is to say, employees in directive or confidence positions. These employees must work the number of hours required to fully comply with their labor duties and are not entitled to surcharges for supplementary work.

All employees, whether ordinary or of management and confidence, are entitled to enjoy remunerated rest on Sundays and holidays as provided for by our Labor Code. Work on Sundays and holidays shall be remunerated by the employer with a special and statutory surcharge provided by the Colombian labor legislation.

Colombian labor law allows the parties involved in an employment relationship to agree on special flexible rotatory schedules (shifts) adjusted to the business activities of the employer company and to the duties of the employee, in order to extend ordinary working hours.

3.3 Vacation days

All employees regardless of the agreed salary structure are entitled to a remunerated rest, different from the one on Sundays and holidays, equivalent to 15 consecutive working days of paid vacation per year of service and proportionally for a fraction thereof. Upon termination of services, the employee is entitled to receive monetary compensation for the remaining vacation days on the basis of 15 working days of salary for each full period of pending vacations and proportionally for fractions of a year. During the employment agreement, employees

may agree with employers, in writing, monetary compensation of up to half of their accrued vacations.

3.4 Semester bonus (“prima de servicios”)

This benefit is equivalent to 15 days of salary payable to the employee on the last day of June and 15 days of salary payable within the first 20 days of December of each year, in proportion to the time worked during the respective calendar semester. This benefit is due - upon termination of employment -, in proportion to the time worked during the calendar semester in which the termination takes place.

3.5 Unemployment aid (“auxilio de cesantía”) and interests on unemployment aid (“interés de cesantía”)

Employees are entitled to unemployment aid (equivalent to 30 days of salary per year of services and proportionally for a fraction thereof) which must be calculated every calendar year. Unemployment aid must be deposited by the employer into an account designated by the employee in an “unemployment aid fund” (i.e., a financial entity authorized by the government to receive and administer such funds), no later than 14 February, of the year following the accrual of this benefit. Upon termination of employment, the unemployment aid accrued to the employee beginning from 1 January through the date of the termination that has not yet been deposited into the employee’s account with the given financial entity, must be paid by the employer directly to the employee.

The interests on unemployment are equivalent to 12 percent of the amount of the unemployment aid per year. Upon the termination of employment, accrued interests on unemployment must be paid directly to the employee.

4. Integral social security system and workplace safety

Irrespective of the method of payment or the agreed salary-structure, employers must affiliate all their employees (national and foreign) to the integral social security system in health, pensions and occupational

risks. Employees are affiliated in order to cover them mainly against the risks of general sickness, maternity, work accidents, occupational sickness, invalidity, old age and death. Employers are responsible for the payment of monthly quotations to the three subsystems.

The contributions to the pension and health systems are shared between the employer and the employee as a percentage of the employee's salary. Employers are subrogated by the social security entities for health, pensions and occupational risks of their employees, as long as affiliations and the payment of the quotations have been timely and correctly performed.

Additionally, due to a recent tax reform, employers with two or more employees will only have to pay the part of the contribution in charge of the employer for employees who earn more than ten minimum legal monthly salaries (this is Col. Pesos \$ 6.160.000 or approximately USD \$3.164).

The employer covers the total amount of the contributions to the occupational risks system; its percentage range will depend on the type of risk in which the company is classified. In addition, the employee who earns more than four minimum legal monthly salaries has to contribute from 1 percent to 2 additional percent of his or her salary which is destined a pension solidarity fund.

Quotations to the social security system must be paid based on the monthly salary earned by the employee. However, the minimum base for setting the amount of the integral social security contributions is 60 percent of the total monthly income earned by the employee, which means that only 40 percent of said income can be excluded from the base (agreed as non - salary nature payments).

If the employee has agreed an integral salary, the base for social security quotations is 70 percent of the amount agreed upon as integral salary. In any case, the base for setting the quotations cannot exceed 25 minimum legal monthly salaries (for the year 2014, COP \$15.400.000).

When employers fail to fulfill their obligation of affiliating their employees to the social security system, they may incur in greater costs, as they can eventually be forced to assume health, pension and occupational risks directly (for example, the employer could be forced to pay a permanent pension allowance or assume expenses for high-cost illnesses).

Concerning health and industrial security obligations, employers are obliged to have healthy and social locations and to supply working equipment that guarantees their optimum work environment. For such purpose, employers with more than 10 permanent employees should implement Health and Industrial Safety Regulations and create an Occupational Health Program and special Committee with the approval of the Ministry of Labor.

Pursuant to such obligations and other legal provisions, employers are responsible for preventing occupational risks (i.e., work accidents and occupational illnesses) in the workplace by, among other activities, providing employees with the necessary industrial and safety equipment as they perform their duties; performing periodical medical exams; taking care of any emergency or work accident of employees and providing first aid; maintaining an active emergency committee, and organizing and ensuring compliance with industrial safety policies. When employers do not comply with these obligations, they may be subject to sanctions, such as fines up to 5000 minimum legal salaries or an eventual judicial or administrative claim seeking compliance with occupational health regulations and even indemnity for damages (which are usually highly assessed) arising from work accidents or professional illnesses.

5. Labor accidents and professional illnesses

Any worker who suffers an accident or an occupational disease and is entitled to a medical leave should receive a monetary aid equal to 100 percent of his basic salary contribution from the time of the accident or disease until the rehabilitation, re-adaptation or cure, or declaration of permanent partial disability, incapacity or death.

Payment of medical leave is made by the occupational risks administrator. The period during which the monetary aid is recognized is 180 days, which may be extended to additional periods and up to 180 additional continuous days, when the extension is determined as necessary for the treatment of the employee or in order to finish his rehabilitation.

After the expiry of said term, if the employee has not been cured or rehabilitated, it must start the statutory procedure to determine the status of permanent partial disability or disability of the employee. Until the degree of incapacity or disability of the employee is established by the competent authorities, the Occupational Risks Administrator must continue to pay for temporary disability aid.

At the end of the period of temporary disability, the employer has the obligation to (i) perform a post-disability medical occupational examination; and (ii) place the employee in the position he occupied if he regains his ability to work or relocate him to a work compatible with his new abilities and skills.

6. Termination of employment and separation payments

Among other circumstances, an employment agreement may be terminated by the unilateral decision of any of the parties thereto, whether or not it exists a proven just cause. The employment agreement may also terminate upon mutual consent of the parties.

The just causes to unilaterally terminate an employment agreement are expressly established by law or those offenses of the employee that are defined by the employer as grave actions that give rise to dismissal (said offenses are usually established in the Work place Regulations, the employment agreement or any other labor regulations). Just causes must be invoked in writing at the time of termination; afterwards, it is not possible to invoke other causes.

When the employment agreement terminates with just cause, the employer is not legally obliged to pay an indemnity for dismissal (severance), as long as the facts and reasons that motivated the decision are fully proven and evidenced. The termination of the employment with just cause requires a previous special disciplinary proceeding. In any case, the employer must have and record serious evidence to demonstrate the just cause and all the documents necessary to support its decision in the event of a judicial claim as the employer will have the burden of the proof.

It is also legally possible to terminate such employment without just cause. In these cases, the employer must inform the employee in writing of its intention to conclude the labor relationship and pay the corresponding legal indemnity. The amount of this indemnity varies, depending on the salary level of the employee, on his seniority and the duration of his employment agreement.

Upon termination employers must pay employees all outstanding mandatory amounts due to the employee which vary according to the kind of salary agreed upon by the parties.

Regardless of the motive of termination, the employer must deliver to the employee a written record of payment vouchers of social security quotations and payroll taxes which the employer performed on the employees' behalf during the last three months of the employment agreement.

7. Territoriality principle

Colombian labor law governs the employment relationships of all employees who render services within the Colombian territory. Therefore, regardless of the place of execution of the employment agreement, the employee's nationality, and the fact that the employer is a foreign entity, Colombian labor law applies and regulates the labor relationship of every employee rendering services within the country.

Our legislation assures the same rights and labor benefits to foreign and national employees. Thus, foreign employees are entitled to irrespective assigned to work in Colombia must comply with all labor obligations to employers and receive all labor benefits established by law irrespective of their nationality and term of assignment in the country.

Colombian employers are obliged to pay their national and foreign employees salaries and mandatory social benefits (as previously mentioned), which vary according to the agreed salary structure. The salary and social benefits are certain and indisputable rights of the employees and they cannot therefore be waived.

It is advisable for foreign employers to have a legal presence in Colombia so that they could have a vehicle for properly complying with all labor obligations of employers, especially affiliating the employees to Social Security Entities, the Family Compensation Bureau and the unemployment aid fund. Foreign employers face practical difficulties because Colombian labor entities demand a local registration number, which they do not have and thus they are not able to comply with basic and mandatory labor obligations.

8. Foreign employees in Colombia

In the specific case of foreign employees (expatriates) who are transferred to work in Colombia in their condition of employees of a foreign entity, labor courts have assumed that they are deemed employees for Colombian labor law purposes. Thus, it is necessary and advisable for the Colombian or foreign employer to have a written employment agreement with them and to comply with all labor obligations as any other employer in the country. The foreign employee shall enter the country with a working visa, in compliance with immigration laws.

Please consider that for tax purposes in Colombia and according to the recent Tax Reform, if a foreign remains for continuous or discontinuous period of 183 days within the country, he will be

considered as a resident. Likewise, if the permanence period is equivalent to 183 days for two consecutive years, at the end of the second year, he will also be considered as resident.

9. Collective employment relationships and unions

9.1 The unions

Under Colombian collective law, unions may be classified in accordance with specific criteria established by law (company, industry or varied occupations). The company union is the most common in our country and is constituted by persons of different professions, jobs or specialties rendering services to the same company or institution.

Industry unions are those formed by workers belonging to the same industry but hired by different employers. Usually, these unions have national coverage and have active participation in the country's political decisions. The industries in Colombia with the strongest unions are oil, tobacco, metal, electrical and textile industries. The public sector also has well-organized unions, such as the jurisdictional branch and the telecommunications sector.

Private sector unions are weak. Up to 2011, the tendency was to reduce affiliations due to a series of factors, including high rates of unemployment in Colombia and recent labor reforms liberalizing the terms and conditions of employment. However, due to the execution of the Free Trade Agreement between Colombia and the United States of America in 2011, collective employment relationships in Colombia and unions has been increasing their scope of influence, considering all benefits, security measures and laws being adopted by the Colombian government, following the requirements of the United States government regarding collective and employment-related matters in Colombia.

Under Colombian labor law, unionized employees and members of the Union Directive Board, the Complaints Committee, and the Disciplinary Committee have the union privilege of special protection

during the term of the entrustment and, as a general rule, for six additional months. Under such union privilege, these employees cannot be unilaterally dismissed, diminished in their labor conditions or transferred to other municipalities or establishments of the company without just cause previously qualified by the labor judge.

Upon integration, purchases or other commercial transactions involving termination of employment of unionized employees, it is important to determine the existence of this union privilege, as it limits the employer faculty to terminate the employment agreement. However, when employees with union privilege are terminated by mutual consent, the said privilege is not applicable.

Colombian labor law provides a special labor proceeding that should be followed by employers in order to obtain an authorization from the labor judge and be able to terminate employment of these protected employees with just cause. If an employee with union privilege is dismissed without authorization from the labor authority, termination of employment will not have legal effects and the employer will be obliged to reinstate the employee with the payment of salaries and social benefits owed for the period of the unemployment.

Employees can constitute and be members of more than one company union; furthermore, they can be affiliated with different unions of the same classification or activity, and several base unions can exist and be represented within the same company.

9.2 Collective bargaining agreement

Unions are authorized by law to enter into collective bargaining agreements on behalf of the employees affiliated to the union. In addition to the provisions agreed upon between the parties, the collective bargaining agreements must indicate the enterprise or establishment, industry and trades covered thereby, the place or places where it will govern, the date on which it will enter into full force and effect, its duration, the causes and methods of its renewal and termination, and the responsibility of each of the parties towards non compliance.

The collective bargaining agreement must be in writing and deposited before the Ministry of Work.

Collective bargaining between employers and labor unions whose members do not exceed one-third of the total number of workers of the given enterprise is applicable only to members of the union which executed the bargaining and to those who adhere thereto or subsequently become members of that union. All the unions related to the enterprise are allowed to participate in the negotiation process of the collective bargaining agreement, regardless of the number of workers that each trade union groups.

Within 60 days prior to the expiration date of the collective bargaining agreement, either party can propose a date for the collective negotiation by submitting a petition sheet with the proposed stipulations for the new bargaining agreement (this is commonly known as “denunciation” of the collective labor agreement).

With such denunciation, the collective conflict commences with representatives appointed by the unions and by the employer company that shall enter into discussions within the five days following the presentation of the petition sheet. This negotiation stage is called “direct agreement” and has a duration of 20 calendar days, which may be extended upon mutual consent of the parties up to another 20 calendar days. If the parties reach an agreement, they must record it as the new text of the collective bargaining agreement, therefore terminating the collective conflict.

When differences subsist upon the conclusion of the direct arrangement stage, the employees may opt to declare strike or to submit their differences to arbitration.

It is important to point out that there is a special union privilege called “circumstantial” which protects the employees presenting the petition sheet (unionized employees and beneficiaries) against dismissal without just cause during the period of presentation of the petition sheet until the termination of the collective conflict.

10. Strikes

Employers are not permitted to use strike-breakers. Only in cases expressly excluded by law will a strike be deemed illegal (possibly resulting in the dismissal of union officers), including the following:

- a. When incurred in essential public service entities
- b. When it pursues different purposes than professional or economic ones
- c. When the stages to legally vote for a strike have not been fully complied with, in the terms established by law.
- d. When it exceeds the legal term or duration
- e. When it is not limited to the peaceful suspension of work
- f. When it is undertaken to demand from the authorities the execution of some act which falls within their functions

Colombian legislation establishes that a strike is a collective, temporary and pacific suspension of work performed, by the workers of an establishment or enterprise, for economic and professional purposes, proposed to their employers, following the legal procedure to invoke it.

Currently, the right to strike in Colombia is mainly a faculty determined by the existence of a collective conflict. The date (or stage) of the strike must be decided by the union members within the 10 days counted as from following the failure to resolve the issues after negotiations in accordance with the procedure set forth under the law.

The decision to go on strike requires the affirmative vote of the majority of the employees of the given enterprise or of the union members when such members make up more than half of the employees of the given enterprise. Strikes are only legal if they begin

between two to 10 days from the date of the resolution authorizing a strike.

The Ministry of Labor and the Colombian President can intervene in disputes through compulsory arbitration, when the strike is declared illegal, or exceeds 60 calendar days.

11. Company regulations and other obligations of the employer

Employers that employ more than five permanent workers in a commercial establishment or more than 10 in an industrial establishment must have written Workplace Regulations. In general terms, those regulations specify the obligations, prohibitions and labor conditions to which the employer and the employees are subject during the development of their labor relationships.

Employers that employ 10 or more permanent workers must have special regulations on hygiene and industrial safety, addressing the protection and personal hygiene of workers; prevention of accidents and illnesses; and workers' safety.

Workplace regulations must be made public to all employees. To ensure that, it must be published in two different places of the company.

All employers must maintain an employee's vacation registration log/book indicating the employees' date of entry and the date of the beginning and end of paid vacation per year of service.

Employers must keep records of supplementary work, including the employee's name; number of hours of authorized overtime work, specifying if such hours are daily or nightly; and the base salary for liquidation of the corresponding surcharges.

Employers with more than 15 permanent workers must promote the training and education of public-institutions students certain technical tasks, jointly with the government entity called "*Servicio Nacional de*

Aprenzizaje (“Sena”),” through the hiring of one apprentice per a group of 20 employees (apprenticeship quota). Once the apprentices are hired, employers must comply with special provisions related to the apprenticeship contract.

Employees who earn less than two minimum legal monthly salaries are entitled to receive from their employer a transportation allowance equivalent to COP \$72.000 for year 2014. Transportation allowance has to be considered and accounted for in order to calculate the social benefits of the employee (unemployment aid, unemployment aid interest, semester bonus) but may be excluded to calculate the payment of vacations and indemnities.

Payroll taxes (contributions to the Family compensation Bureau, Sena, and the Colombian Family Welfare Institute) are required to be paid by employers who earn more than 10 minimum statutory wages (except regarding payment of taxes to the Family Compensation Bureau, which must be performed over the complete payroll). Said taxes, in the aggregate, amount to 9 percent of the employer’s monthly payroll.

Recent Tax Reform created a new tax for all legal entities called CREE (Income Tax For Equity for its acronym in Spanish). CREE must be paid according to the total amount of the payroll of the employer. If the employer has employees who earn more than ten minimum legal monthly salaries it will be exempt for those employees for payment of contributions to Sena and Colombian Family Welfare Institute mentioned above and equivalent to monthly 5%. As from January, 2014 the saving on this matter will be equivalent to 13,5% as employers are also released from payment of the health contributions (equivalent to 8,5%) for this group of employees.

For employees who earn more than ten minimum legal monthly salaries, employers must continue payment of payroll taxes and in addition, CREE tax.

From a tax standpoint, bear in mind that labor payments are those derived from or are related to an employment relationship and, as a general rule, are subject to taxes except as otherwise specifically provided. Labor payments not subject to specific tax treatments are exempt from a 25 percent income tax.

To make this taxation effective, employers are obliged to perform income tax withholdings through two procedures. The tax Reform also entailed important modifications in debugging the basis for such withholding, which have impact on the determination of the income tax for employees.

The employer must give the employee that requests it, upon termination of employment, a certification including the period of service, nature of work, wages earned and information related to the execution of the labor contract.

If the employee has to change his or her place of residence in order to take the employment, the employer must pay the employee reasonable expenses for transferring to and from his or her place of origin, except if termination of the labor contract occurs due to the employee's fault or is voluntary on his or her part.

Mexico

1. Introduction

The Mexican Federal Labor Law (“FLL”) regulates employment relationships in Mexico. The FLL applies to all employees that provide subordinated services in Mexico, regardless of nationality or the place of the worker’s employment (the “workplace”). The FLL contains detailed provisions concerning the minimum employment conditions and rights which must be afforded (“granted”) by the employer to its workforce. Such provisions are not, under any circumstances, subject to waiver by employees.

The FLL contemplates two general types of employment relationships: individual and collective. An individual employment relationship is created automatically upon a person rendering services in a subordinated manner (subject to the control of the employer) and receiving payment for such services, whether on a temporary basis or for an indefinite duration. Collective employment relationships are established between employees that are organized by a certified labor union and an employer.

On December 1 2012, the FLL, was amended, particularly on provisions related to human rights at the work place, Human rights at the workplace, new hiring modalities, employer obligations and prohibitions, wage schemes, outsourcing and profit sharing, rescission, back wages, severance and statute of limitation, procedural aspects and sanctions and collective aspects and unions.

The following is a description of the mandatory benefits to which all employees in Mexico are entitled to; the types of individual labor contracts contemplated by the law; causes for employment termination and employee entitlements to severance, as well as, an overview of collective relationships and unions in Mexico, including strike procedures.

2. Mandatory Benefits

The FLL mandates a series of minimum benefits that must be provided to all employees, both for individual and for collective relationships. Such minimum benefits consist of the following.

2.1 Minimum Wage

The FLL establishes a minimum amount which must be paid to all employees in cash, without deductions or withholding taxes on a weekly basis. Such minimum wage is determined annually by the National Minimum Wage Commission. The minimum wage varies for each of three economic regions into which the country is divided. A general minimum wage applies to all employees within each economic region, except those employees that qualify under certain categories defined by the National Minimum Wage Commission as “professional categories” for which a specific professional minimum wage applies. The current general minimum wage in Mexican pesos (non-professional) for the two regions effective January 1, 2014 is as follows:

Zone A (includes Mexico City, Monterrey and Ciudad Juarez) Mon):	MXN67.29 per day
Zone B:	MXN63.77 per day

2.2 Maximum Hours/Overtime Pay

The maximum number of hours which an employer may require its employees to work, without having to pay overtime, is 48 hours per week on a day shift, 45 on a mixed shift and 42 on a night shift. The normal hours may be distributed throughout the week (six days) as necessary. In the event employee works in excess of the maximums

described above (or the specific work shift agreed with the employee), employer will be obligated to pay overtime.

Payment of overtime in accordance with the FLL is calculated as follows: The first nine hours of overtime in a week period at 200 percent, and any additional work exceeding nine hours should be paid at a 300 percent of the standard hourly rate.

Working in overtime is only mandatory for employees for the first nine hours.

Overtime payment applies to all employees regardless of their position. Employees are entitled to at least one paid full day of rest per six days of work.

Sunday premium

Employees whose normal work shift includes working on Sundays are entitled to a 25 percent premium.

2.3 Vacation Days and Vacation Premium

Employees with more than one year of seniority are entitled to six days of paid vacation. Employers must pay vacation days at the normal wage, plus a premium of 25 percent (vacation premium) of such wage. This six-day period is increased by two days per subsequent year of seniority up to the fourth year (or a total of 12 vacation days). After the fourth year, vacation days are increased by two days every subsequent five years.

2.4 Paid Holidays

The following are the mandatory paid legal holidays. Employees who are required to work on any of these holidays must be paid three times their normal wage:

- 1 January (New Year's Day)
- First Monday of each month of February (Constitution Day)

- Third Monday of March
- 1 May (Labor Day)
- 16 September (Independence Day)
- Third Monday of each month of November (Revolution Day)
- 1 December, every six years, upon inauguration of a new president
- 25 December (Christmas)

Those days are determined by federal and local electoral laws as election days.

2.5 Christmas Bonus

All employers must pay their employees a year-end bonus equal to at least 15 days' wages, payable before 20 December of every year.

2.6 Profit Sharing

An employer must distribute to its employees an amount equal to 10 percent of its pre-tax profit, within 60 days after it is required to file its year-end income tax return. Fifty percent of such amount is to be distributed in proportion to the number of days worked by each employee during the year, and the remainder according to the wages of each employee. Newly-created companies are exempt from this obligation during their first year of operations.

2.7 Paid Adoption leave

Working mothers adopting children will be entitled to a six weeks full paid leave of absence from the date of the adoption. The expense is not covered by the Social Security System and shall be paid by the employer.

2.8 Paid Paternity and adoption leave

Employers shall grant employees with five days full paid paternity leave for the birth or adoption of a child. This expense is not covered by the Social Security System.

2.9 Paid Maternity Leave

All employers must provide their female employees with a fully-paid maternity leave of six weeks prior to their approximate delivery date and six weeks thereafter. After this 12-week period, employers must offer these employees their former positions, including any accrued rights there under such as those that pertain to accrued seniority and vacation leave pay. The employer's expense during such maternity will normally be covered by the Mexican Social Security Institute. (See Section 4 below.)

2.10 Social Security

See Section 4 below.

2.11 Worker's Housing Fund

See Section 5 below.

2.12 Retirement Insurance

See Section V below.

2.13 National Institute for Consumption of Employees ("INFONACOT")

As of December 1, 2012, employers are obligated to register before the INFONACOT, which grants loans to employees for the acquisition of goods. Once registered, employers are obligated to withhold from the salaries of the employees the amounts due to INFONACOT and perform the corresponding payments of the loans.

3. Employment Benefits

Employers may voluntarily enhance the minimum benefits required by law or provide additional benefits as they see fit. It is common for specific industries or service sectors to provide special benefits such as productivity bonuses designed specifically to meet the needs of that sector. Benefits such as savings funds, punctuality and attendance bonuses, cafeteria and transportation subsidies, enhanced medical coverage, and so on are provided voluntarily by many employers in order to remain competitive.

4. Social Security Benefits

The Social Security Law (“SLL”) first enacted on 31 January 1942, has undergone a series of amendments. In accordance with the SSL in effect, all employers must register their employees in the mandatory regime of the Mexican Social Security Institute (“IMSS”). Such registration relieves the employer from the following: (i) work-related risks; (ii) health and maternity insurance; (iii) disability pension and life insurance; (iv) retirement, advanced age and old age pension; and (v) child care and social benefits. Upon the creation of an employment relationship, the employee automatically becomes entitled to the various social security benefits, which are funded by contributions paid by both employers and employees, depending on the risk factor of the company.

Benefits	Employer's contribution	Employee's contribution
Fees for Benefits in Kind to Pensioners	1.05% of the BQW	0.375% of the BQW
Occupational Hazard	Minimum: 0.50% of BQW Maximum: 15.000% of the BQW	Occupational Hazard

Benefits	Employer's contribution	Employee's contribution
Illness and Maternity	a) Benefits in kind: 20.4% of GMW for Mexico City For salaries greater than 3 GMW for Mexico City: 1.1% of the difference between the BQW from the 3 GMW for Mexico City b) Monetary benefits: 0.70% of the BQW	a) 0% – for salaries lower than 3 GMW for Mexico City For salaries higher than 3 GMW for Mexico City: 0.4% of the difference between the BQW from the 3 GMW for Mexico City b) Monetary benefits: 0.25% of the BQW
Disability and Life	1.75% of the BQW	0.625% of the BQW
Day Care Centers and Social Benefits	1% of the BQW	0
Retirement, Dismissal in Advanced Age and Old Age	Retirement: 2% of the BQW Advanced Age and Old Age: 3.150% of the BQW	0 1.125% of the BQW

The contributions in respect of each type of benefit are as follows:

GMW for Mexico City: General minimum wage for Mexico City.

BQW: Base Quotation Wage.

The IMSS assumes all responsibility for providing the benefits and, unless the employer has not complied with its registration and payment obligations, the employer is released from any liability for work-related accidents or illnesses. If the employer does not comply with its registration and payment obligations, the IMSS will nevertheless provide the benefit to the employee but it will revert the actual cost thereof to the employer and will impose penalties. Social

security benefits are provided at the IMSS facilities throughout Mexico.

The basis for the social security contributions is the integrated wage, which includes all monetary and in-kind compensation and benefits received by the employee, but excluding the following:

- (i) Work tools and clothing
- (ii) Savings funds, provided they include matching contributions by the employer and the employee
- (iii) Contributions paid by the employers for “social purposes”
- (iv) Contributions made by the employer to the National Worker Housing Fund Institute (“INFONAVIT”) for workers’ housing
- (v) Profit sharing paid to the employees;
- (vi) Food and housing, provided the employee pays a portion thereof
- (vii) Food baskets or the monetary equivalent thereof
- (viii) Attendance and punctuality bonuses
- (ix) Overtime pay, unless such service is agreed upon on a permanent basis
- (x) Additional contributions for retirement, advanced age and old age pensions

Any employer who fails to properly withhold and remit the corresponding social security contributions, who submits false information to the IMSS, or who otherwise fails to fulfill its obligations under the SSL, may be subject to a range of penalties.

5. National Workers Housing Fund

The Worker Housing Fund Law (“INFONAVIT Law”) in effect since 24 April 1972, established INFONAVIT, a federal agency entrusted with the administration of the National Housing Fund, which is a fund consisting of contributions made by all employers in an amount equal to 5 percent of the wages paid to their employees.

Under the original structure, the INFONAVIT performed the building of low-income housing for workers, which were sold to employees who requested the same and who were declared qualified for credit granted by the agency itself.

Since the National Housing Fund was always insufficient to meet the needs of the Mexican population, INFONAVIT currently grants loans on a selective basis, depending on the seniority in the employment.

6. Types of Labor Contracts

6.1 Overview

In accordance with the FLL, an individual labor contract, whatever its nature is a contract by which a person is obligated to render personal services under another person’s control and subordination, in consideration of the payment of a salary. While it is not necessary to execute a written contract to establish an employment relationship, and while an employee without a written contract will be entitled to the same benefits under the law, it is advisable to execute an Individual Labor Contract with each employee to clearly establish the terms of the relationship. Among the items that should be covered in the contract are the following:

- (i) Age, nationality, sex, marital status and domicile of the employee and employer;
- (ii) Duration of the work period;
- (iii) Description of service or services to be rendered;

- (iv) Work schedule;
- (v) Mandatory days of rest;
- (vi) Training.
- (vii) Other work conditions, such as vacation, weekly days of rest and other terms agreed on by the employee and the employer

There is a presumption under Mexican law that an employment relationship is for an indefinite period, the underlying objective being to provide employees with job stability and security of tenure.

Therefore, unless the nature of the services to be performed are such that they are necessarily only for a specific or a determined period, the FLL deems the labor relationship or the Individual Labor Contract to be for an indefinite period. The different types of Individual Labor Contracts (labor relationships) contemplated by the FLL are those that cover: (i) an undetermined period; (ii) a specific job; and (iii) a determined period. Each of these types of contracts is discussed below.

6.2 Individual Labor Contract for an Undetermined Period

The execution of this type of contract implies that the labor relationship will be permanent and must contain all the information mentioned above. This type of contract may be terminated, suspended or rescinded, only if the causes for the termination provided for in the FLL exist. These causes for termination are discussed in Section VII below.

6.3 Individual Labor Contract for a Specific Job

A contract for a specific job may be executed only if the nature of the services to be performed so requires. For example, this type of contract is used for a specific job, such as the construction or remodeling of a workplace or for a particular task, such as the filing of tax returns. This type of contract may be terminated once the specific

job has been concluded, as well as for the causes for termination discussed below.

6.4 Individual Labor Contract for a Determined Period

The execution of this type of contract, as in the case of a contract for a specific job, may be executed only when the nature of the services to be performed so requires. For example, the FLL allows this type of contract to be entered into if its purpose is to temporarily replace another employee who has been incapacitated, or has gone on vacation or indefinite leave of absence. This type of contract has also been used where there has been a temporary increase in the volume of sales and production or other business activities of the employer which cannot be handled by the normal labor force.

It should be noted that this type of contract, as well as the contract for a specific job, will be deemed valid by Mexican labor authorities, only if the activities covered by such contracts do not fall within the permanent activities of the employer. If the activities to be performed by the employee under these types of contracts (specific job or determined period) fall within the permanent activities of the employer, the Mexican labor authorities will consider the labor relationship to be for an undetermined period, with the employee being entitled, at his or her election should his or her services be terminated, to a severance payment or to be reinstated. Therefore, it is necessary to analyze the services to be performed by the employee in order to determine the type of contract to be executed.

6.5 New hiring modalities.

As from 1 December 2013, the FLL was amended and now adds three new hiring options which employers may consider when hiring a new employee: trial periods, initial training contracts, and seasonal work.

Trial Period: Employment for an indefinite term or employment for a defined term over 180 days may now include a “trial period.” The rationale behind the trial period is to allow employers the opportunity to verify whether the new employee has the skills necessary to perform

the particular position. The trial period must be agreed in a written employment contract in the first instance. It can be for up to a maximum of 30 days and may be extended to 180 days in certain cases, such as for individuals holding positions of general management with broad responsibilities as well as employees performing technical and professional activities.

Initial Training: The Law introduces a special type of hiring modality for initial training. This type of modality allows the employer to provide training to assist new employees in acquiring the skills and knowledge necessary to perform the particular job duties. As in the case of the Trial Period the Initial Training shall be agreed with the employee and included in the particular agreement. Two main rules guide this type of relationship. One, the employees' initial training period may only last for up to three months. However, for employees who are directors or in general management positions with broad administrative responsibilities as well as employees performing technical and professional activities the initial training period may last for up to six months.

Notably, the trial period and initial training period cannot be combined. And, if, after the trial period or the initial training period, the employer decides that the employee does not have the skills necessary to perform the position, the employer may terminate without being subject to severance liability. It will be important that any performance issues are well documented.

The Law establishes the National Productivity Committee, which shall be conformed by employees' and employers' representatives in each company. An employer will need to obtain the opinion of its designated "Productivity and Training Commission" as part of the process to conclude the trial or training period which will not rule on the merits of the termination of those periods.

Seasonal Work: Employment for an indefinite term may now include seasonal work. Under this arrangement, the employment relationship can be suspended during off-season periods in order to relieve the

employer of wage payment obligations and the employee of any service obligations.

The rationale behind this provision is that previously employers would simply hire the employees for a definite period of time, which at its conclusion automatically terminated the labor relationship with the employee and thus, the employee would not gain seniority. Now, the employer may simply suspend the employment relationship and the employee can accrue seniority. These employees should be entitled to the same type of benefits as other employees performing similar jobs in the company.

7. Termination of Employment and Severance Payments

7.1 Overview

Once an employment relationship is established, unless it is for a specific job or for a determined period, the employment relationship cannot be terminated by the employer without cause. If it is terminated, the employee will be entitled to a severance payment in the amounts described hereunder. As noted above, employment relationships for a specific job or for a determined period may be established only if the circumstances actually warrant such type of relationship. Otherwise, an employment relationship for an undetermined period will be presumed to exist.

7.2 Occasion and Basis of the Severance Payment/ Reinstatement

To dismiss an employee without giving him or her a severance pay described below, a Mexican employer must: (i) be able to prove, in a labor court if necessary, that the dismissal was for a statutorily defined just cause; and (ii) give the employee prompt written notice of the dismissal stating the just cause therefore. If the employer fails to prove just cause or give adequate written notice, or if the employee ends the individual employment relationship for a statutorily defined just cause as explained below, the employer is obligated to give a severance payment comprising the following:

- (i) Three months' wages based on the employee's wages earned at the time of the termination (integrated salary)
- (ii) 20 days of integrated salary per year of service (This amount does not apply under certain circumstances.)
- (iii) A seniority premium equal to 12 days' wages per year of service rendered (subject to salary limitation up to twice the minimum wage)
- (iv) For labor processes initiated before December 1, 2012 back wages from the date of the dismissal until the date of payment. According to the FLL in effect as of December 1, 2012 the amount of back wages, in processes filed after that date, is limited to a 12-month period, maximum. After 12 months, interest at a monthly rate of 2% is accrued on an amount of up to 15 months' salary, which must be capitalized at the time of the payment.
- (v) Accrued benefits

An employee dismissed without cause has the option to be reinstated to his former job instead of receiving the severance payment, provided he is not an employee of "trust" as described below.

7.3 Just Cause for Dismissal

The FLL lists the specific causes for which an employer may dismiss an employee without being liable to severance pay. These causes include the following:

- (i) The employee during work hours, commits dishonest or violent acts, makes threats, offends or mistreats the employer, his family or the officers or administrative personnel, unless he is provoked to act in self-defense.
- (ii) The employee commits any of the offenses listed in the preceding paragraph against his co-workers.

- (iii) The worker commits (outside work premises) the offenses listed in paragraph (i) above.
- (iv) While performing his or her work, the employee intentionally or through negligence materially damages the workplace, machinery, instruments, raw materials and any other items that belong to the company.
- (v) The employee, through negligence or inexcusable carelessness, jeopardizes the safety of the establishment or the persons inside it.
- (vi) The employee commits immoral acts in the workplace.
- (vii) The employee reveals manufacturing secrets or confidential matters to the detriment of the enterprise.
- (viii) The employee defies the authority of the employer or its representatives by disobeying their orders or instructions without reasonable cause, in matters related to the work under contract.
- (ix) The employee refuses to follow preventive measures or certain procedures to avoid accidents or illnesses.
- (x) The employee reports for work under the influence or is found to have taken narcotics or illegal drugs. An exception to this rule is if the employee is required to take depressants per a doctor's prescription.
- (xi) A final judgment imposing a prison sentence on the employee prevents him from fulfilling the employment contract.
- (xii) There is reasonable cause for loss of confidence.
- (xiii) As of 1 December 2012, the FLL establishes the following new causes for dismissal:
 - Harassment

- Sexual harassment
- Ill treatment against employer's clients and suppliers
- Lack of formal requirements for the provision of the service

The FLL, in most instances, imposes the burden of proof on the employer with regard to the cause of termination of an employee's services.

7.4 Employee's Just Cause for Rescinding

An employee may rescind and be entitled to severance pay if his or her employer commits specific acts against him or her (per the FLL list). These acts include the following:

- (i) The employer misleads the employee with respect to the conditions of the job at the time it was offered to him or her. This cause will cease after the first 30 days of employment.
- (ii) The employer, his family, his officers or administrative personnel, during working hours, commit dishonest or violent acts, threaten, offend or mistreat the worker, his spouse, parents, children or siblings.
- (iii) The employer commits the acts referred to in item ii beyond working hours.
- (iv) The employer diminishes the worker's salary.
- (v) The employer fails to give the worker his or her salary on the agreed-on date and place.
- (vi) The employer intentionally damages the employee's work tools.
- (vii) There is serious danger to the security or health of the worker or his family.

- (viii) The employer, through negligence or inexcusable carelessness, endangers the safety of the work site.
- (ix) Equally severe circumstances with similar consequences.
- (x) As of 1 December 2012 harassment, sexual harassment and discrimination are incorporated as new causes for justified termination of the labor relationship by the employee.

7.5 Seniority Premium

The seniority premium discussed above, which is equivalent to 12 days' wages (limited to twice the minimum wage) for each year of service, must be paid to all employees who: (i) voluntarily leave their employment after completing 15 years of service; (ii) leave their employment for just cause; (iii) are dismissed by the employer with or without just cause; or (iv) die while employed, in which case their beneficiaries receive the seniority premium.

7.6 Employees of "Trust"

The FLL contemplates a special category of employees in management positions in general and other employees in positions of trust ("*trabajadores de confianza*"). If dismissed without just cause, an employee of trust will be entitled to severance pay, but he or she cannot be reinstated. Employees of trust may form unions, but they must be different from those of other employees. To determine whether employees hold positions of trust depends not on their titles but on their actual functions. The FLL defines functions of "trust" as those that generally pertain to direction, inspection, surveillance and supervision ("*direccion, inspeccion, vigilancia y fiscalizacion*") and those that involve the personal lives of the principals of the company.

7.7 Other Special Categories of Jobs

In addition to employees of trust, there are special regulations under the FLL for the following: (i) work on board ships; (ii) work of airline crews; (iii) railway work; (iv) automotive transportation work; (v) public service handling operations in zones under federal jurisdiction;

(vi) field work; (vii) work of commercial and similar agents (sales representatives); (viii) work of professional athletes; (ix) work of actors and musicians; (x) work at home; (xi) domestic work; (xii) work in hotels, restaurants, bars and similar establishments; (xiii) family industry; and (xiv) residency work of physicians undergoing training.

7.8 Outsourcing

The FLL in effect as of December 1, 2012 The FLL establishes a legal framework for outsourcing. Under the FLL, outsourcing is defined as a labor regime by virtue of which an employer, named contractor, performs tasks or provides services under its control for a contracting party, either an individual or an entity, that establishes the tasks to be performed by the contractor and supervises the contracted services or the execution of the tasks.

This type of work must fulfill the following terms and conditions:

1. it may not cover all the activities carried out in the workplace;
2. it must be justified as a specialized job; and
3. it may not include tasks equal or similar to those being carried out by the rest of the contracting party's employees.

If all of these conditions are not met, the contracting party will be deemed an employer of the outsourced employees and will be subject to all liability associated with same, including social security obligations.

According to the FLL, the employer is the entity or individual, with sufficient elements to comply with the labor obligations, who hires individuals who render subordinated services for the payment of a salary.

Employers are directly in charge of the obligations established in the FLL and the Social Security Law.

In this case, even if the contractor complies with its own obligations as employer and relieves the contracting party of all the labor obligations, in the event the companies operate under the outsourcing regime not complying with the applicable requirements set forth in Article 15-A of the FLL, the beneficiary of the services will not be relieved of any labor obligation.

8. Collective Labor Relationships and Unions

8.1 Overview

As discussed above, the FLL provides for individual and collective labor relationships. A collective relationship exists when the work force is organized under a labor union and the employer has executed a collective bargaining agreement with such union.

The FLL recognizes the freedom of association of workers and employers, defining it as the temporary agreement of a group of workers or employers aimed at promoting and protecting their respective interests. The FLL defines a union as an association of workers or employers incorporated for the study, improvement and defense of their interests.

Trade unions are a substantial and important sector with regard to the Mexican political landscape. Unions have become a very strong force within the official political party and also within the Mexican Congress. This sector within the Mexican Congress has introduced and supported most of the so-called “Social Laws.” Unions in Mexico are maintained in all government bodies which elect the members of state and Federal Labor Boards.

Mexican unions are campaigning more than ever to attract members. Office, clerical workers, salesmen and education employees have now been added to the already long list of unions. The National University of Mexico and other universities have had many strike problems as a result of its employees’ affiliation to a union. Rarely does one find a large Mexican industrial company which is not unionized.

8.2 Unions

Unions in Mexico are voluntary organizations classified as follows:

- (i) Trade unions which organize workers of a specific trade, occupation or craft
- (ii) Company unions which organize workers of a given company or firm
- (iii) Industry unions which organize workers of a specific type of industry
- (iv) National industry unions which organize workers of a specific type of industry in two or more states

Unions are free to form federations or confederations at the local or federal levels. Currently, federations of unions may be classified as (i) traditional, generally considered moderate, and affiliated with Mexico's ruling political party; or (ii) radical or independent, some of which are affiliated with leftist or radical groups and parties and "other conservative or right-leaning groups.

The FLL grants rights both to coalitions of workers, which are temporary associations of any number of workers for the defense of mutual rights and interests, as well as unions, which are permanent associations of at least 20 workers for the study, furtherance and defense of mutual rights and interests that require certification by the corresponding Labor Board.

Although only unions may execute collective bargaining agreements with a company, a coalition also has the right to strike under certain circumstances. It must be stressed that since the FLL provides for a series of minimum benefits and working conditions, regardless of whether the employees are organized under a union or not, in many parts of Mexico, employees are not inclined to set up a union, especially if the employer is attentive to the needs of the workers and complies with the FLL. However, there are certain cities and regions

where union representation is the norm. Accordingly, prior to the start of any operation, it is important to carefully assess a particular labor environment.

8.3 Collective Bargaining Agreement

The Collective Bargaining Agreement (“CBA”) is the agreement executed by one or more workers’ unions and one or more employers, or one or more employers’ associations, with the purpose of establishing the conditions according to which work is to be performed in one enterprise or establishment, or more.

To be valid and enforceable, the CBA must be in writing and has to be filed before the Conciliation and Arbitration Labor Board (“Labor Board”) which has jurisdiction over the industrial activity performed by the employer. Pursuant to the FLL, the CBA must contain at least the following: (i) names and domiciles of the parties; (ii) the enterprises and establishments covered; (iii) its duration; (iv) the days of rest and vacation; (v) salary rates; (vi) work schedule; (vii) regulations governing training; (viii) rules governing the creation of the mixed commissions with respect to the FLL; and (ix) other provisions agreed on by the parties.

Under the terms of the FLL, the CBA is subject to revision each year in connection with salaries and every two years in connection with fringe benefits and any other provisions agreed upon in the CBA. The union must ask for a review of the CBA at least 30 days in advance of the expiration date with respect to salaries, and 60 days in advance with respect to fringe benefits. The petition or revision must be filed before the Labor Board. If an agreement is not reached by the parties, unions are legally allowed to strike.

As of 1 December 2012, employers are obligated to inform employees about the CBA applicable to the working center.

8.4 Suspension of the Collective Labor Relationship

The FLL provides that a Collective Labor Relationship may be suspended under the following situations: (i) *force majeure* or acts of God, not imputable to the employer; (ii) the employer's physical or mental incapacity or death; (iii) the lack of raw material not imputable to the employer; (iv) an excess in production in relation to the economic state of the enterprise and prevailing market conditions; (v) the temporary and apparent non-profitability of operations; (vi) the lack of funds and the impossibility to obtain them to sustain normal operations; and (vii) the failure of the government to pay the enterprise for certain work or services for which the latter has been contracted provided that these services are indispensable to continuing operations. The employer must prove before the Labor Board all these suspension causes so it can obtain the latter's approval.

The suspension may affect the Collective Labor Relationship totally or partially. The employer is obliged to inform the employees as well as the Labor Board of the suspension through the proper channels of communication. The suspended employees are entitled to a severance payment which must be determined by the Labor Board.

8.5 Termination of a Collective Labor Relationship

The FLL provides certain causes for termination of a Collective Labor Relationship, which are basically the same as that for the suspension of such relationship.

9. Strikes

9.1 Overview

Pursuant to the FLL, a strike is defined as a temporary suspension of work carried out by a coalition of workers. Strikes are limited to the mere act of suspending such work. The objectives of a strike are limited to the following: (i) obtaining equilibrium between the production factors and harmonizing the rights of labor with those of capitalists; (ii) obtaining from the employer the execution of a CBA and demanding its revision upon expiration thereof; (iii) obtaining

from the employer a signed mandatory CBA; (iv) demanding compliance with the CBA or mandatory CBA in the enterprise in which employee rights have been violated; (v) demanding compliance with the legal provisions on profit sharing; and (vi) supporting a strike if the objective thereof is one or more of the abovementioned.

9.2 Strike Procedure

A union planning to strike must comply with the following procedures as provided in the FLL:

- (i) It has to file before the Labor Board a strike call notice stating the objective thereof.
- (ii) In the strike call, the union has to mention the list of demands, indicating the intention to go on strike if the demands are not met.
- (iii) It has to mention the designated date for the suspension of work, which must be given at least six days prior to the date of the strike (for normal industries) and 10 days prior (for public service industries). Such term will run from the date on which the employer is served by the Labor Board.

After the Labor Board receives the strike call, it must schedule a conciliation hearing before the day of the strike, to try to obtain a conciliation agreement between the parties. At this conciliation stage, the Labor Board may not rule in connection with the legality of the strike, but may act only as an observer. If the parties do not reach an agreement, the union is allowed to proceed with the strike.

Once the strike begins, the employer is not allowed to perform any kind of work and is forbidden to cross the “picket line.” During the strike, the employees are not allowed inside the employer’s premises.

9.3 Legality of a Strike

As of the day the strike is to begin, the employer has the legal right to request a ruling that the strike is illegal. Strikes are considered illegal in the following cases:

- (i) The suspension of work was implemented with less than the majority of the unionized workers.
- (ii) The strike does not comply with the permitted objectives referred to above.
- (iii) The union does not comply with the strike procedures discussed above.

The employer has 72 hours within which to request a ruling with respect to the illegality of the strike.

The Labor Board, after receiving the petition of the employer, must serve the petition on the union and schedule a hearing, at which the union must answer the petition. Both parties must submit evidence supporting the petition or the response, as the case may be. In order for the employer to prove the cause for illegality referred to in paragraph (i) above, it must ask for a vote pursuant to which the employees may express their will on whether or not they approve of the strike.

Peru

This document provides employers with an outline of the current regulations and practices regarding employment, labor and social security in Peru.

1. Employment Contracts

1.1 General Characteristics of contracts

In the rendering of personal, subordinated and remunerated services it is presumed the existence of an indefinite term labor contract.

Hiring local personnel does not require further pre-conditions, except for the minimum age for employment, which in Peru is 18 years. Minors between 15 and 18 years require parental consent and the approval of the Ministry of Labor (www.mintra.gob.pe).

Local personnel is usually hired for an indefinite period. In this case it is not mandatory to enter into a written labor contract. In case of part time, fixed term or foreign employees it is mandatory to put the agreements down in writing. Take into consideration that fixed term employment agreements are allowed but only in cases provided by law. They shall also be filed to the Labor Authority for registration purposes.

1.2 Part-time Employment Contracts

Part-time employees are those who in average work less than four hours daily. Part-time employees may work 24 hours a week if the employer establishes a 6 working days week. If the working week has five days, then the maximum working hours a week shall be less than 20 hours.

Part-time employment agreements must be executed in writing and be submitted before the Labor Authority.

Part-time employees are entitled to mandatory labor benefits that do not require rendering services for more than four hours daily for their perception, i.e., vacations -only six working days-, legal bonuses, life insurance policy, family allowance, and profit sharing (when applicable).

1.3 Fixed Term Employment Contracts

Fixed term employment contracts are allowed but only in cases provided by law. They shall also be filed to the Labor Authority for registration purposes.

Peruvian legal system has established nine modalities of fixed-term employment contracts, divided in three groups:

(a) Temporary nature contracts

- (i) For the beginning of a new corporate activity: it is the agreement between the employer and employee in case of the beginning of a new activity. It must be understood for new activity, the beginning of the productive activity of a company, the installation or opening of new establishments or markets, as well as the beginning of new activities or the increase of the already existing activities within the same company. Its maximum duration is three years, being possible to execute said contracts for minor periods but without exceeding the mentioned term.
- (ii) For markets needs: it is the agreement executed for the coverage of temporary and unforeseeable increases of the production, originated by substantial variations of the market. Its maximum duration is five years counting the initial contract and its extensions.
- (iii) Corporate reconversion: it is a modality that shall be used for the accomplishment of labors derived from the replacement, extension or modification of the ordinary or complementary activities of the company. Its maximum

duration is two years, being possible to execute said contracts for minor periods but without exceeding the mentioned term.

(b) Accidental contracts:

- (i) Occasional: it is executed for contracting services derived from transitory needs different from the ordinary needs of the company (we understand, complementary). Its maximum duration is six months per year.
- (ii) Replacement: it is a contract for the replacement of an employee subject to an indefinite term employment agreement, whose relationship is suspended. According to law, its duration depends on the term of suspension of the replaced employee.
- (iii) Emergency: it is a contract used in case personnel is needed due to situations generated by superior force or irresistible force, which are inevitable, unforeseeable and irresistible (*force majeure*). According to law, its duration is the one that is necessary to cover the emergency.

(c) Specific work or specific service contracts:

- (i) For certain work or specific service: this modality refers to the contract for performing a transitory and specific work or service. According to law, its duration will be the one that turns out to be necessary to complete the work or service.
- (ii) Intermittent service: it is the contract executed to perform permanent but discontinuous labors in the work center. Employees may have a preferential right to be re-contracted in the future; this possibility can be established in the original contract, which will operate automatically. Its duration is related to the discontinuous labor.

- (iii) Seasonal contract: it is a contract that may be used for the coverage of seasonal activities. Its duration depends on the duration of the season.

Peruvian legal system allows having different and continuous fixed term contracts with the same employee, under different modalities, depending on the needs of the employer. The only requirement is that they do not overcome the maximum duration of five years, except in the cases in which the law provides a shorter maximum term.

Likewise, authorities (judicial and administrative) in the practice understand that this maximum term is applicable to those modalities in which the law has not imposed a quantitative maximum duration.

There are certain situations provided by law which may lead to consider fixed-term employees as indefinite term personnel (fixed-term contract distortion). Those legal suppositions are the following:

- If the employee continues working after the expiration of the term of the contract, or after the agreed extensions, or if they exceed the maximum allowed term
- In case of a contract for certain work or specific service, if the employee continues working after the work or service is concluded
- In case of a replacement contract, if the replaced employee does not return to work at the date he or she must to and the fixed term employee continues working.
- If the employee evidences simulation or fraud in the execution of the contract

We must mention that a permanent employee who is terminated cannot be contracted through a fixed-term contract, except in case of one-year passes since the termination.

There is no limit to the number of employees who can be contracted through fixed-term contracts; provided their contracts are supported by the cases provided by law.

1.4 Trial Period

Peruvian labor regulation establishes a three-month trial period for regular personnel.

In case of trust and management employees, it can be extended, if agreed, to six and 12 months, respectively.

1.5 Quota of disabled employees

Pursuant to Law N° 29973, private companies with more than 50 employees must maintain a ratio of not less than 3% of disabled employees in its payroll.

2. Working Hours

The maximum is an eight-hour work day or a 48-hour work week.

Overtime is calculated based on the hourly rate. The first two hours of overtime are paid at 1.25 times the employee's regular hourly pay. All additional hours are paid at 1.35 times the employee's regular hourly pay.

Accumulative or atypical work periods are allowed provided they do not exceed the average of 48 hours of work per week.

Management personnel, employees who are not under immediate supervision and those who perform intermittent services with waiting periods or security services, are not entitled to overtime pay.

3. Paid Leaves

In connection to leaves of absence established by Peruvian regulations, the main paid leaves are the following (in addition to vacations):

3.1 Weekly rest

Employees are entitled to a minimum of a 24-hour period of rest per week, which normally corresponds to a Sunday.

They may work on Sunday and take the day off on another day of the week. If the employee works on a weekly rest day without taking a substitute day-off, the employer shall pay an additional 100 percent of the daily salary.

3.2 National holidays

Employees do not have to render services on holidays established by law, but they do have the right to earn the salary corresponding to such days.

The employer and the personnel may agree to a substitute day-off work. If the employee works on a legal holiday without taking a substitute day-off, the employer shall pay an additional 100 percent of the daily salary.

3.3 Sick leave

The length of the sick leave depends on the employee's disability for working.

For the first 20 days of disability, the employer has to pay the corresponding salary to cover the sick leave. After this period, the Social Security –in fact, the employer pays this amount which is later reimbursed by the Social Security- will cover the sick leave with the payment of the disability subsidy for 11 months and 10 days.

3.4 Maternity leave

The length of the maternity leave is 90 days (45 days of prenatal leave and 45 days of postnatal leave). Additionally, in cases of multiple childbirths or if the child presents a disability, the postnatal leave will be extended to 30 additional calendar days.

The maternity leave subsidy is covered by the Social Security –in fact the employer continues paying the employee’s remuneration which is later reimbursed by the Social Security.

3.5 Paternity leave

Its length is four consecutive labor days as of the childbirth date certified by the respective medical center. According to law, this leave is paid by the employer.

3.6 Adoption leave

Employees who have adopted a child are entitled to a leave of 30 days provided that the child is no more than 12 years old. According to law, this leave is paid by the employer.

If the petitioners are spouses, the leave will be taken by women.

3.7 Leave due to serious illness or accident of direct relatives

Employees are entitled to a maximum of seven days paid leave in case his/her child, parent, spouse or partner have been diagnosed with a serious or terminal disease or if they have suffered a serious accident.

If the employee needs more days for assisting his/her relative the leave will be granted for no more than thirty days as part of his/her vacation. If exceptionally there is the need of the employee to extend his/her leave he/she may agree with the employer to set off the leave with overtime.

4. Mandatory Employee Benefits

Take into consideration that the employer is not only required to accomplish all the obligations related to the payment of the employee’s remuneration, but it is also obliged to grant all the mandatory rights and benefits requested by Peruvian labor regulations.

Said rights and benefits are the following:

4.1 Minimum wage

Currently the minimum wage set by law is PEN750

4.2 Legal Bonuses

There are two mandatory bonuses within the year equivalent to two monthly remunerations. Provided that the employee works the complete semester, the first is payable during the first half of July and the second is payable during the first half of December. The bonuses are calculated on the basis of the monthly remuneration received by the employee plus the regular remunerations received during the corresponding semester. If the employee does not work the complete semester, the bonus is pro-rated.

Pursuant to Law N° 29351, in force until 31 December 2014, bonuses are not subject to any social contribution except for the income tax. Therefore, until December 2014, the employers shall pay directly to its employees, as an Extraordinary Bonus, the amount of the contribution to the Social Security (Essalud) for the bonus, which is equivalent to 9% of the bonus. If the employee is covered by a private health provider entity, the amount of said extraordinary bonus will be equivalent to 6.75% of the bonus.

4.3 Compensation for time of services (CTS)

This is a legal benefit consisting of semiannual deposits of approximately 8.33% of the wages - including bonuses - earned each semester.

The deposits are made in an account called “CTS Account” in the bank chosen by the employee every May and November. The semesters considered for each deposit are November-April for the May’s deposit and May-October for the November’s deposit.

Employees may freely use the total amount deposited in their accounts once the employment relationship is over. However, at any time before the termination of employment, employees may withdraw from their CTS accounts up to 70% of the excess of 6 gross monthly remunerations.

4.4 Vacations

Employees are entitled to a 30-day paid vacation per each complete year of services. The vacation remuneration is equivalent to the monthly remuneration and has to be paid before the employee leaves for vacation. The vacation remuneration may also include other complementary and regular remunerations according to law.

For reaching this benefit, the employee must have worked an entire year of services. The year of services required by law is calculated considering the beginning date of the labor relationship.

The 30-day vacation period shall be taken without any interruption. However, employees can agree with their employer to break down, accumulate or reduce this period taking into consideration that under no circumstance the vacation period can be less than seven calendar days per year.

The employer and the employee decide by mutual agreement when the vacations have to be taken, considering the company's needs and the interests of the employee. However, in case of disagreement, the employer may impose its decision.

The employer may not grant vacations when the employee is on sick or accident leave, unless the sickness or accident happens after the beginning of the vacation.

When an employee does not take vacations within the next year after acquiring this right, he or she is entitled to:

- (i) One monthly remuneration for the services rendered in the corresponding month

- (ii) One monthly remuneration for the non-taken vacation
- (iii) An indemnity equivalent to one monthly remuneration for not having taken the vacation. This compensation is not subject to payment or deduction of any tax. The company's managers or representatives who have decided not to take vacations are not entitled to this indemnity, assuming that the manager or representative has enough power to make such decision.

The employer has to pay this indemnity even if the employee took his or her vacations after the year in which he or she was supposed to take them.

4.5 Family Allowance

This benefit applies to employees whose remuneration is not regulated by collective bargaining. Any employee is entitled to receive a monthly amount equivalent to 10% of the minimum wage (that percentage is currently equivalent to PEN75), if he or she has one or more children under the age of 18 or until the age of 24 if they are following superior studies.

4.6 Profit Sharing

Employees have the right to receive profits through the distribution of an annual percentage in the company's income before taxes (between 5% to 10% according to the kind of activity).

Profit sharing is applicable to those companies that have more than 20 employees (to establish the number of 20 employees it is necessary to consider personnel under indefinite contract, temporary contract or part-time contract).

The applicable rate of profit sharing is 10% for fishing, telecommunications and industrial companies; 8% for mining, trading activities and restaurants; and 5% for other activities.

For the purpose of classifying companies within the categories of the abovementioned activities, the United Nations ISIC Revision 3 (International Standard Industrial Classification of All Economic Activities - Revision 3) shall be applied.

The profit-sharing rate shall apply to the company's annual net profits before taxes. However, the company is entitled to offset the net profits with accumulated losses from previous fiscal years. Please note that the deduction from applying the statutory profit sharing rate is considered an expense for tax purposes, and therefore may be deducted for income tax purposes.

The statutory profit-sharing shall be paid to employees according to the following:

50% of the profit sharing amount will be distributed to each employee applying the following formula:

$$\text{Amount for the employee} = \frac{0.5 * \text{total profit sharing amount} * \text{effective working days by the employee during the fiscal year}}{\text{aggregate amount of working days of all the employees of the company}}$$

The other 50% of the profit-sharing amount will be distributed to each employee applying the following formula:

$$\text{Amount for the employee} = \frac{0.5 * \text{total profit sharing amount} * \text{salary of the employee during the fiscal year}}{\text{aggregate amount of the salaries of all the employees of the company}}$$

The statutory employee's profit sharing is capped at 18 monthly salaries for each year.

Profits shall be distributed within 30 days after the last day for filing the income tax returns. The income tax returns shall be filed around mid-March (the exact date is established by SUNAT each year). Legal

interests shall apply as of the day following the day in which the company is required by the employee to pay the profit-sharing amount.

The employer must deliver to its employees a document describing the detailed calculation corresponding to the profit-sharing amount paid to them.

4.7 Life Insurance

The employer is obligated to pay life insurance for all employees with more than four years of service.

5. Social Security and Taxes

5.1 Social Security in Health (Essalud)

Pursuant to Law N° 26790, all employees and their dependents are statutory affiliates of the Social Security in Health (Essalud).

The monthly contribution for Essalud is equivalent to 9% of the employee's remuneration and shall be paid by the employer.

Essalud provides coverage to their affiliates by granting the following benefits:

(i) Healthcare (prevention and promotion)

The coverage of health prevention includes:

- Health education
- Assessment and risk control
- Immunizations

The coverage for health recovery includes:

- Healthcare, both ambulatory and hospitalization

- Medicines and medical supplies
 - Prosthetics and orthopedic devices
 - Rehabilitation services
- (ii) Welfare and social promotion services
- (iii) Cash benefits

The principal cash benefits granted by Essalud are the following:

- Temporary disability subsidy: The right to receive the temporary disability subsidy is acquired as of the 21st day of disability. During the first 20 days of incapacity, the employer continues to be responsible for paying the employee's remuneration. To this end, the employer may accumulate all disability days paid during each year. The subsidy will be awarded for the duration of the employee's disability, up to a maximum of 11 months and 10 consecutive days.
- Maternity subsidy: The subsidy is awarded in order to compensate the loss of earnings as a result of childbirth and care needs of the newborn during maternity leave. It is awarded for 90 days; those days can be distributed in the periods immediately before and after birth, as the mother chooses, provided that during said period the mother does not work. The maternity subsidy may be extended to 30 additional days in cases provided by law.
- Breastfeeding allowance: The breastfeeding allowance is granted in money, in order to contribute to the care of the newborn. In case of multiple births an additional allowance per child is recognized.

(iv) Burial expenses

The burial expenses benefit covers funeral services and related expenses due to the death of an affiliate.

As a general rule, affiliates and their dependents are entitled to benefits granted by Essalud provided that they evidence three consecutive months of contribution or four non consecutive within the six months prior to the month in which the contingency was initiated.

In case the assistance is required as a consequence of an accident, there is no need to evidence the aforementioned periods.

Take into consideration that Essalud may request the employer to reimburse the benefits provided to an affiliate if the corresponding employer fails to comply with: (i) its obligation to declare and pay the contributions of the three consecutive months or four non-consecutive within the six months prior to the month in which the contingency was initiated, and/or; (ii) the payment of the contributions of the 12 months prior to the six months prior to the month in which the contingency was initiated.

In case of maternity benefits, as an additional condition for being entitled to the benefits, it is required to be affiliated at the time of conception.

5.2 Private Health Care Providers

In addition to Essalud coverage, the employer may grant healthcare plans to its employees through a Private Health Care Provider ("*Entidades Prestadoras de Salud*" - EPS). In that case, the employer may have a credit against the Essalud contribution equivalent to 25% of the applicable contribution (2.25% of the monthly employees remuneration).

In no case this credit may not exceed the following amounts:

- (i) The amount allocated by the employer to finance health coverage in the corresponding month, and;
- (iii) Ten percent of the tax unit multiplied by the number of employees who received EPS coverage.

In order to use the aforementioned credit, the employer must follow the legal procedure for selecting the EPS.

The plan coverage offered by the employer through an EPS shall provide the same benefits for all covered employees and their dependents, regardless of their remuneration.

Such coverage shall not be less than the minimum care plan offered by Essalud and, unless express consent of the employee, co-payments may not exceed 2 percent of the monthly remuneration for each ambulatory healthcare and 10 percent for each hospitalization. Furthermore, such coverage should include attention to accidents and occupational diseases, as appropriate, and shall not exclude care to pre-existing ailments.

Take into consideration that the EPS plans do not include all the coverage granted by Essalud.

5.3 Retirement contributions

Employees elect the pension system to which their contributions shall be made.

The monthly contribution for the Private Pension System is equivalent to 10% of the employee's remuneration. Additionally, there is a fee (between 0.47% and 1.84% of the remuneration) and a premium for disability and survival insurance and burial expenses (1.23% of the remuneration). All these items are discounted by the employer from the employee's salary and paid to the Administrator of the Pension.

The monthly contribution to the National Pension System is equivalent to 13% of the employee's remuneration. The employer shall discount the contribution and pay it to the National Tax Authority, which collects this contribution.

5.4 Income Tax

The employer must withhold and pay monthly to the Tax Authority the income tax generated by employees.

Domiciled employees income is taxed in Peru at an annual progressive rate (following the deduction of 7 Tax Units (PEN 26,600.00) that starts at 15% for the first 27 Tax Units (PEN 102,600.00) of net income, at 21% of net income for amounts from 27 Tax Units to 54 Tax Units (PEN 205,200.00), and is capped at 30% of net income in excess of PEN 205,200.00.

Take into consideration that due to their condition of non-domiciled in Peru, foreign employees are taxed on Peruvian source income only, according to the non-domiciled income tax criteria. The income tax rate for non-domiciled individuals is a flat 30% rate.

A non-domiciled individual will be deemed to be a domiciled individual once he or she has resided in Peru for at least 183 days within a 12-month period. The change of status (non-domiciled to domiciled) will be effective as of the next fiscal year (1 January) following the year in which he or she has stayed in Peru for the required period.

6. Termination of the Employment Relationship

6.1 Legal causes of termination

Peruvian regulation provides the following possibilities to conclude employment relationships:

- (i) Death of the employee or of the employer if he or she is a natural person.

- (ii) Resignation of the employee
- (iii) The termination of the work or service, the fulfillment of resolutive conditions and the expiration of the term for fixed term employment agreements
- (iv) Mutual agreement
- (v) Employee's permanent and absolute disability
- (vi) Retirement
- (vii) Dismissal, under the circumstances provided by law
- (viii) Termination by objective cause, under the circumstances provided by law

6.2 Dismissal

Employees who work four or more hours daily are protected against arbitrary dismissal.

The reasons that justify the dismissal of an employee are explicitly contained in the Refunded Text of Labor Productivity and Competitiveness Act, approved by Supreme Decree N° 003-97-TR, which has classified the dismissal cases related to the ability of the employee and related to his or her conduct.

The causes related to the ability of the employee are:

- (i) the physical, intellectual, mental or sensory deficiencies which affect the performance or the rendering of services (after reasonable adjustments has been taken and only if there is no other position where the disabled employee can be transferred)
- (ii) the poor performance in relation to the employee's ability with the average work performance under similar conditions

- (iii) (a) the unjustified refusal of an employee to take a medical examination that was previously agreed or established by law this examination is important for or in order to comply with the employment relationship. and (b) not following the preventive or curative measures prescribed by a physician to avoid illness or accidents

The reasons that justify the dismissal related to the conduct of the employee are:

- (i) the major offense.
- (ii) a criminal conviction for intentional crime and
- (iv) the disqualification of the employee.

The following acts are deemed as major offenses which may justify the dismissal of the employee:

- The non-fulfillment of the labor obligations that implies the breach of the labor's good faith, the reiterative resistance to comply with labor instructions, the repeated sudden stoppage of labors and the non-fulfillment of the Internal Work Regulations or the Health & Safety Regulations duly approved by the competent authority; those non-fulfilled obligations must be serious
- The deliberate and reiterative decrease of the labor performance or of the volume or quality of the production, verified by the inspective services of the Labor Ministry
- The consummated or frustrated misappropriation by the employee -for his or her own benefit or for a third person benefit- of goods or services of the employer or of those that are under its custody, as well as the illegal retention or misuse of such goods or services, no matter their value

- The use or the delivery to third parties of confidential information of the employer; the theft or the non-authorized use of the company's documents; giving false information to the employer in order to cause damage or to obtain any advantage; and the unfair competition.
- The reiterated attendance to the workplace under the effects of alcohol, drugs or narcotics. Depending on the nature of the labor duties or of the position of the employee in some cases, the reiteration of the offense may not be required. The police must participate to verify the event.
- The violence, serious misconducts, defamation and verbal or written offense towards the employer, or its representatives, the executive personnel or other employees, that are performed within or outside the workplace if those facts are directly related to the labor relationship
- The intentional damage to the buildings, facilities, works, machineries, instruments, documentation, raw materials and other goods owned by the company or under its possession
- The abandonment of work for more than three consecutive days, the unjustified absences by more than five days in a period of 30 calendar days, regardless if they have been previously disciplined in each case; the repeated noncompliance of the work schedule [tardiness], if the employer has previously given notice of them and if written reprimands and suspensions have been previously imposed to the employee
- Sexual harassment

The employer who considers that one of its employees has committed a major offense that justifies his or her dismissal, must send a communication to him or her, attributing the corresponding offense, specifying in detail the facts that justify this imputation and, if it is

possible the employer must enclose the documentation that sustains its allegation.

Due to a generalized judicial opinion, the employer must be very rigorous in the fulfillment of all the formalities that imply a dismissal by a major offense. It is very important to have certainty of the offense and his or her author; to have all the respective evidence; and that the communication describes the offense and the legal and factual reasons of the imputation.

In said communication the employer will grant the employee a term of at least six calendar days to answer the imputation. During this period the employer can release the employee of the obligation to attend to the workplace, as long as it does not affect his or her right to defense.

If the employee does not answer the communication within said term or if the employer considers that the answer does not affect the imputation, the employer can dismiss the employee by sending him or her a letter indicating the cause and date of termination.

6.3 Termination by objective causes

Termination by objective causes is also known as “collective dismissal” and proceeds in the following cases:

- (i) Act of God or *force majeure*
- (ii) Economic, technological, structural or analogous reasons
- (iii) Dissolution and Liquidation of the company, and bankruptcy
- (iv) Patrimonial restructuring

To make effective said terminations, the procedures established by law must be followed which may involve a notice to or the approval of the Labor Authority.

In case of economic, technological, structural or similar motives, collective termination shall involve at least 10% of the total number of employees of the entity.

6.4 Termination without cause: Severance pay

As aforementioned, if there is a legal cause that justifies the termination of the employment relationship, there is no need to pay severance (dismissal indemnity).

However, in the event that the termination of an employee is unjustified (i.e. because it is not based on a legal cause or it is successfully challenged by the employee at court), the employee is entitled to a severance pay consisting of 1.5 times his or her monthly salary for each year of service plus fractions up to a maximum of 12 monthly salaries in case of an indefinite term-relationship.

When dealing with fixed-term employment contracts, the severance pay consists of 1.5 times the monthly salary for each month until the completion of the contract with a maximum of 12 monthly salaries.

The mandatory severance payment is not considered a taxable income for income tax purposes.

The corresponding severance pay must be paid by the employer within the next 48 hours of the employee's termination.

Due to decisions of the Constitutional Court, employees who are dismissed without any cause may refuse to collect the severance payment and request their employment status to be reinstated, except in case of management or trust personnel who were hired since the beginning of their employment to render such positions.

7. Foreign Employees in Peru

When hiring foreign personnel, it is necessary to execute a written employment contract according to certain formalities and limitations (i.e., its term shall not exceed three years, which could be extended for similar periods). The Ministry of Labor must approve these contracts.

Foreign employees should not exceed 20% of the total workforce and their combined salaries should not exceed 30% of the total company payroll.

The applicable law provides for exceptions to those restrictions, such as high-level executives of a new company, high-level executives going through corporate restructuring, a specialized professional or technician, or personnel from companies that have entered into agreements with entities of the public sector. Those restrictions do not apply in case of (i) citizens with Peruvian spouse, ancestors, descendants and siblings; (ii) citizens whose countries of origin have entered into an international dual nationality or a labor reciprocity treaty.

Foreign employees may only begin their services once the contract has been approved by the Ministry of Labor, and when the adequate migratory status (resident visa) has been obtained. The foreign employees may not be included in the payroll until they fulfill both requirements.

Special rules apply in case of Spanish citizens, citizens from countries of the Andean Community and MERCOSUR.

8. Hiring through Labor Intermediation Companies

The general rule is that the personnel shall be hired directly by the employer. However, third companies may provide personnel to their clients only to render the following services:

- (i) Temporary services: occasional services or temporary replacement of personnel. The number of seconded workers cannot exceed 20% of the client company's total staff
- (ii) Supplementary services: services that are not part of the client's main activity and whose absence does not affect the activity of the company, such as courier, surveillance, security, reparations and cleaning.
- (iii) Highly specialized services: complex and specialized services that are not part of the client's main activity, such as specialized sanitation and maintenance.

Labor intermediation companies must provide a bail to the client company, in order to guarantee the compliance of their assigned employees' labor and social security obligations. In case the bail is insufficient for the payment of labor rights owed to the assigned employees, the labor intermediation company and its client shall be jointly responsible for the payment of such debts for the time of the assignment.

The law enumerates prohibited labor intermediation cases. These are the:

- assignment of personnel for permanent services of the client company's main activity
- assignment of personnel for replacing other employees who are exercising their right to strike
- assignment of personnel for replacing employees of another labor intermediation company or labor cooperative
- assignment of personnel in order to infringe or restrict collective rights of employees in the client company as well as those of the labor intermediation company

- in case of temporary services if assigned personnel exceeds the limit of 20% of the client company's whole staff
- In case of temporary services other than those authorized to be covered by occasional or replacement contracts
- repeated breach of the client companies' obligations. Such as (i) not requesting the certificate of the current registry of the labor intermediation company; and (ii) contracting the services of a labor intermediation company without authorization

9. Outsourcing

According to Peruvian regulations "outsourcing" is defined as the business organization by which a company entrusts or delegates the development of one or more parts of its main activity to one or more companies (outsourcing companies) that procure works or services related to their main activity.

The regulation is applied to outsourcing relationships with continuous displacement of personnel to the main companies' facilities, but not to outsourcing events without displacement or with eventual or sporadic displacement.

Outsourcing will be lawful when besides complying with the aforementioned definition, the outsourcing companies:

- (i) bear the services provided at their own account and risk;
- (ii) count with their own financial, technical or material resources;
- (iii) are responsible for the result of their activities; and
- (iv) their employees are under their exclusive subordination. This means that the employees shall receive instructions, sanctions and be supervised only by the outsourcing company.

The requirements mentioned above shall be jointly complied, because the non-existence of any of them will invalidate the outsourcing.

In addition, it has been set forth as characteristic elements of outsourcing activities:

- (i) The outsourcing company shall have more than one client.
- (ii) It shall have its own equipment and capital investment.
- (iii) The compensation to be paid to the outsourcing company shall be calculated based on the services rendered by the company.

In case the outsourcing relationship does not gather the aforementioned requirements or if after a reasonable analysis of the characteristic elements it can be evidenced by the lack of business autonomy of the outsourcing company, the outsourcing will be deemed as distorted. In that event, the displaced personnel of the outsourcing company will be deemed as employees of the main company.

In addition, take into consideration that pursuant to outsourcing regulations the main company is jointly responsible for the payment of the displaced employee's remunerations, labor benefits and social security contributions accrued during the term of displacement. Rights and benefits as a consequence of collective bargaining, labor agreements or those unilaterally set forth by the employer are excluded. The joint responsibility applies up to a one-year term after concluding the continuous displacement.

Outsourcing companies must be registered before the Labor Authority. However, this obligation is fulfilled by declaring the displacement of the employees on its electronic payroll.

10. Collective Labor Relations and Unions

10.1 Unions

Unions can be freely organized following certain rules and requirements established by Law. Peruvian regulations recognize the following types of labor unions:

- (i) Company level union: They are integrated by employees who render services to the same employer. In order to create this type of union, a minimum number of 20 employees are required.
- (ii) Activity level union: They are integrated by employees who render services to companies of the same industry or economic sector. In order to create this type of union, a minimum number of 50 employees are required.
- (iii) Guild union: They are integrated by employees who develop the same trade, profession or specialty. In order to create this type of union, a minimum number of 50 employees are required.
- (iv) Various occupations: They are integrated by employees of various trades, professions or specialties who render services for different employers notwithstanding their activity, provided that in a certain place, city or county the minimum number of members required to form other type of union is not met. In order to create this type of union a minimum number of 20 employees are required.

Membership in labor unions is voluntary.

10.2 Collective Bargaining

Peruvian Constitution includes the right to bargain collectively in order to rule remunerations, benefits and working conditions. A company must be operating for at least one year in order to be required by a union to negotiate a collective agreement.

Venezuela

1. Introduction

The Venezuelan Organic Labor and Workers' Law ("OLWL"), most of the provisions of which became effective on 7 May 2012 (some are deferred and others are subject to certain transition periods), regulates employment relationships in Venezuela. The OLWL derogated the former Venezuelan Organic Labor Law ("OLL"), applies to Venezuelans and foreigners in connection with the work performed or agreed upon in Venezuela, and its provisions are of public policy that in principle cannot be relaxed or amended by the parties. The OLWL contains detailed provisions concerning the minimum employment conditions and rights that the employer must offer and pay its employees.

The OLWL regulates both the individual employment relationship and collective labor relations. An individual employment relationship is presumed to exist whenever an individual provides a personal service to another. This presumption may be rebutted if it is shown that, in reality, the relationship is of a different nature. Collective labor relations exist among employees organized in unions and the employer, group of employers, or employers' collective organization.

The following summarizes the most common mandatory benefits to which employees are generally entitled in Venezuela, the various types of individual employment contracts regulated by the OLWL, the causes for termination of individual employment relationships, severance benefits, and an overview of collective labor relations and unions in Venezuela, including strikes.

2. Mandatory Employee Benefits

The OLWL and other statutory labor provisions establish a set of minimum benefits that in general must be provided by the employer to its employees. Such minimum benefits are the following.

2.1 Minimum Wage

Venezuela has minimum wages periodically adjusted by the government. The minimum wages that have been in effect in Venezuela since 6 January 2014 are as follows:

As of 6 January 2014:

Workers in the private and public sector	VEF 3,270.30 per month or VEF 109.01 per day
Adolescents and apprentices	VEF 2,432.10 per month or VEF 81.07 per day

The foregoing minimum wages must be paid to the employee in cash. Though some times adjusted with more frequency, these minimum wages must be determined on a yearly basis by the National Executive under certain circumstances set forth by the OLWL.

2.2 Maximum Hours / Overtime Pay

As of 7 May 2013, the maximum number of hours which, in general, an employer may require its employees to work without having to pay overtime are: eight hours per day and 40 hours per week for the day shift; 7.5 hours per day and 37.5 hours per week for the mixed shift; and for the night shift, the maximum limits will continue to be seven hours per day and 35 hours per week. There are certain exceptions to these restrictions.

Overtime must be compensated with a surcharge of at least 50 percent over the normal salary value of the hour for the corresponding ordinary shift. In principle (there could be exceptions), an employer may not require its employees to work more than 10 hours of overtime per week or more than 100 hours of overtime per year. In principle (there are certain exceptions), the total hours of work per day, including overtime, cannot exceed 10 hours.

2.3 Vacation Days and Vacation Bonus

The OLWL provides that employees are entitled to enjoy 15 working days of paid vacations upon completion of one continuous year of service, plus one additional working day for each subsequent continuous year of service, up to a maximum total of 30 working days per year.

Likewise, employees are entitled to receive, on vacation, a vacation bonus equivalent to 15 days of normal salary, plus one additional day of normal salary for each subsequent continuous year of service, starting on the second year, up to a maximum total of 30 days of normal salary per year of service.

Vacation payments should be made upon the basis of the normal salary, that is, the salary earned by the employee on a regular basis.

2.4 Paid Holidays and Weekly Rest Day

As of 7 May 2013, there are at least two mandatory weekly rest days that must be granted and paid, which in principle must be consecutive and one of them must be Sunday. However, in certain activities that cannot be stopped for public interest reasons, or for technical or eventual reasons, the two consecutive and mandatory weekly days may not necessarily include Sunday. In addition, if the work is continuous and performed by shifts, the two mandatory weekly rest days may not necessarily include Sunday, their enjoyment does not necessarily have to be consecutive, and in weeks where there are six consecutive days of work, the sixth day worked may be compensated with an additional day of paid vacations.

The following dates are holidays under the OLWL: Sundays; 1 January; Monday and Tuesday of Carnival; Maundy Thursday and Good Friday; 1 May; 24, 25 and 31 December; the dates listed in the Law of National Holidays, including 19 April, 24 June, 5 July, 24 July, and 12 October; and those days declared holidays by either the national government or the state or municipal authorities, up to a maximum of three days per year.

An employee required to work on any of these holidays must be paid with a surcharge of 50 percent over the normal daily salary.

Weekly rest days and holidays are compensated with a payment of one day of the normal salary. When the monthly salary is based on the time devoted to work, the payment for holidays and the required weekly rest days is already included in the salary. When an employee works on any of his mandatory weekly rest days, the employee is entitled to be paid for the work rendered that day (which is already included in the monthly salary if the salary is based on the time devoted to work) with a surcharge of at least 50 percent. The OLWL also provides that if the work on a mandatory weekly rest day is for four or more hours, the employee will be entitled to a paid compensatory rest day the following week, and if the work is for less than four hours, the employee will receive half day of paid compensatory rest in the following week. However, if an employee works on the holidays mentioned above, he will not have a compensatory rest day (unless the holiday coincides with a mandatory rest day), but his work will be paid in addition to the payment of the holiday, with a 50 percent surcharge.

2.5 Profit Sharing

Employees are entitled to receive an annual payment for profit sharing or participation in the net profits of the employer, in an amount not less than 30 days' salary and not more than four months' salary. In any event, and within the limits mentioned, the employer must distribute 15 percent of its net profits for each fiscal year, determined on the basis of the employer's income tax return. This benefit must be paid within two months following the closing of the company's fiscal year. It is mandatory to make an advance payment of this benefit, equivalent to at least 30 days' salary, during the first fortnight of December of each year. Profit-sharing is paid in direct proportion to the number of full months of service rendered, and based on the salary earned by each employee during the given fiscal year.

2.6 Seniority Benefits

The OLWL maintains the seniority benefit set forth in Article 108 of the OLL, which is called a “guaranty of the seniority benefits” in the OLWL, with the following modifications:

- (i) **Quarterly Component:** The five days of salary per month provided under the OLL, in the new OLWL, accrue on a quarterly basis (15 days per each quarter worked), and are credited or deposited based on the last salary earned during the respective quarter. However, if the employment relationship ends during the first three months, this benefit accrual is five days of salary per month or fraction worked. Likewise, the worker who had less than three months when the OLWL became effective will receive the first quarterly credit or deposit when reaching three months of service.
- (ii) **Annual Component:** The two additional and cumulative days of salary per year of service continue to accrue based on the services rendered after the first year of service, up to a maximum of 30 days of salary per year of service (thus, for the second year, the worker earns two additional days; for the third year of services, the worker earns four additional days; for the fourth year of service, the worker earns six additional days, and so forth, until stabilizing in a maximum of 30 additional days per year of service). In our view, for those workers who had been earning their additional days under the OLL, this accrual shall continue progressively under the OLWL (thus, their calculation would not start from zero).
- (iii) **Potential destinations of the guaranty of seniority benefits:** In addition to the possibility of crediting this benefit in the employer’s books or depositing it in a trust as the worker elects, the OLWL adds the option of depositing this benefit with a National Seniority Benefits Fund (Fondo Nacional de Prestaciones Sociales), to be regulated by means of a special law. The OLWL does not provide that the workers will receive

payment of the annual and additional cumulative days every year, which suggests that these annual days must be credited or deposited as well.

- (iv) Interest rate applicable when the guaranty for seniority benefits is credited in the employer's books: as in the former OLL, this interest rate will be the average between the interest rate for loans and the interest rate for deposits, as determined by the Central Bank of Venezuela.
- (v) Calculation of the seniority benefits upon termination of the employment relationship: Upon termination of the employment relationship for any reason, the seniority benefits shall be calculated based on 30 days of salary per year of service or fraction thereof exceeding six months, based on the last salary earned by the worker by the time the employment relationship terminates. If the worker earns a salary per work unit, piece, commission or any other form of variable salary, the basis for this calculation shall be the average salary earned during the six months immediately preceding the termination of the employment relationship. In order to make this calculation, the entire time worked by the worker must be taken into consideration, including the time worked prior to the effective date of the OLWL, or the time worked as of 19 June 1997 if the worker had begun working for the employer prior to this date. Finally, this calculation is compared with what the worker has earned as a guaranty of seniority benefits and, if this calculation is higher than such guaranty, the worker will be entitled to receive payment of the difference.
- (vi) Term for Payment: The employer shall have five days after the termination of the employment relationship to pay this benefit. In case of delay in such payment, late payment interest will be applied at the interest rate for loans determined by the Central Bank of Venezuela.

Employees may continue to request advances of up to 75 percent of the amount of seniority benefits credited or deposited, or loans up to the equivalent of 100 percent of the amount credited or deposited, to attend to certain housing, educational and medical needs.

2.7 Integral care for the employee's children

Employers with more than 20 employees are required to provide day-care or initial education services for their employees' children from three months up to six years of age. It is not entirely clear yet whether the special conditions provided for in the regulations of the OLL will continue to apply. The regulations of the OLL are still in effect to the extent not contradicting the provisions of the new OLWL. We advise to closely monitor the development of this item.

2.8 Workers' Food Law

The Workers' Food Law obligates employers to grant a balanced meal during the workday to those of its employees whose monthly normal salary is equivalent to or lower than three urban minimum monthly wages. The employees who are entitled to this benefit will cease to receive it once they begin earning a monthly normal salary higher than three urban minimum monthly wages. This benefit cannot be delivered in cash (with certain cases of exception), but only through the following options: (i) installation of eating facilities by the employer or a group of employers in locations close to the workplace; (ii) hiring of companies specialized in meal supply; (iii) granting electronic cards, coupons, or tickets to the beneficiary employees for the sole purpose of obtaining food in restaurants or similar establishments; and (iv) use of eating facilities and services administered by the competent public institution on nutrition. If the electronic card, coupon, or ticket option is implemented, the value thereof cannot be lower than 0.25 tax units or higher than 0.50 tax units per workday. The law provides that the benefit must also be paid, among other cases, when the employee is on vacation, or temporarily disabled for no more than 12 months, during pre-natal or post-natal leave or paternity license, or when the employee is unable to work due to causes attributable to the employer.

2.9 Health and Safety

The employer must provide a safe and sanitary environment for the employees to work. Among many other obligations, the employer must: (i) notify the employees in writing and in any other appropriate manner, of the nature of the occupational risks to which they will be subject as a result of the performance of their services, the damages that such risks could cause to their health, and the mechanisms, measures and principles of prevention that must be applied to avoid occupational accidents or illnesses; and (ii) participate in the organization and registration of an Occupational Health and Safety Committee(s). There are many other obligations the employer must comply with, established under different laws and regulations, including but not limited to the Organic Law on Prevention, Conditions and Work Environment (“LOPCYMAT”) and its regulations. Failure by the employer to comply with its various obligations regarding occupational health and safety may subject the employer and/or its representatives to civil, administrative and even criminal liability.

2.10 Employment of Individuals with Permanent Disability

According to the Law for Persons with Disability, at least 5 percent of the employees of all employers must be individuals with permanent disability. The positions for which permanently-disabled individuals are hired cannot impair their performance and cannot exceed their capacity to work.

2.11 Maternity, Paternity and Breastfeeding Leaves

Women are entitled to maternity leave of six weeks prior to giving birth and 20 weeks thereafter. In the event that pre-natal leave is not fully used, the remaining portion is added to the post-natal leave. If birth occurs after the expected date, the pre-natal leave period is extended to the date of birth, but the post-natal leave is not reduced. The father is entitled to 14 days of leave following childbirth or adoption of a child less than 3 years old (though the length of the leave may be higher in certain cases). If the female employee adopts a

child under three years of age, she is entitled to a maternity leave of 26 weeks. The OLWL does not oblige the employer to pay the employee during these leaves, but some employers do so at least to a certain extent in accordance with their internal policies. Finally, whenever the employee wishes to take his/her accrued vacation time immediately after paternity or maternity leave, the employer must allow it.

Likewise, during breastfeeding, the woman employee is entitled to two paid licenses per day of half (0.5) an hour each to feed her baby. These licenses are increased to 1.5 hours each and extended where the employer does not maintain a childcare facility or an initial education service.

The Partial Regulations to the LOPCYMAT provide: (i) the right of either the mother or the father to enjoy one day each month for purposes of taking the newborn to a pediatric visit at a medical center, which permit must be remunerated by the employer and is mandatory during the newborn's first year; and (ii) the right of the pregnant female employee to enjoy one day or two half-days' paid leaves each month during pregnancy in order to obtain medical attention.

Finally, the recent Law for the Protection of Families, Motherhood and Fatherhood provides that: (i) the male employee who adopts a child under three years of age is entitled to a paternity leave of 14 days. This law extends this leave (and the leave resulting from birth of a child) for another 14 days if the child is seriously ill or if the mother's life is in danger due to health complications; (ii) in case of multiple delivery, the paternity leave will be for 21 days; and (iii) in case the child's mother dies, paternity leave could be up to 12 weeks. These licenses should be paid by the social security system.

2.12 Organic Law on the Right of Women to a Life Free from Violence

The Organic Law on the Right of Women to a Life Free from Violence ("OLW") contains provisions protecting women from discrimination in employment. We recommend reviewing the OLW.

Among other important topics, it contains provisions regulating employment relations between female employees and their employers, and provides for substantial sanctions and liabilities in the event of noncompliance.

3. Voluntary Employee Benefits

Employers may voluntarily enhance the minimum benefits required by law or provide additional benefits as they may consider appropriate. It is common to provide special benefits such as life and medical insurance and savings plan contributions, among others. These are provided voluntarily by certain employers in order to remain competitive.

4. Social Security and Other Social Contributions

4.1 Social Security

Employers must register with the Venezuelan Institute of Social Security (“IVSS”) prior to commencing activities. Employers must also register all their employees with the IVSS within three working days of the employees’ hiring. Both employers and employees must contribute to the IVSS. All contributions are traditionally computed as a percentage of the employee’s normal salary (current law, however, temporarily provides that the contribution must be a percentage of the employee’s monthly income). In any event, the taxable salary base cannot exceed the equivalent of five urban minimum monthly salaries. For pensions and health- related benefits, the employee pays 4 percent, and, while the legislation has contradictions, the IVSS has been requiring employers to contribute from 9 percent to 11 percent, depending on the degree of risk involved in the employer’s activity.

The employee’s contribution must be withheld by the employer from the corresponding salary payment made to the employee and delivered to the IVSS.

4.2 Educational Fund and Apprenticeship Program

The National Institute of Training and Socialist Education (“INCES”), formerly the National Institute for Educational Cooperation (“INCE”), collects the following contributions: (i) an employer contribution of 2 percent of the normal salary paid to the employees. This contribution is mandatory for all commercial or industrial persons and for all forms of association whose purpose is to provide services or professional advice, provided that they do not belong to the republic, the state or the municipalities, and provided further that they have five or more employees; and (ii) an employee contribution of 0.5 percent of the profit-sharing, Christmas or year-end bonuses received by the employees working for all persons in the private sector and for all forms of association whose purpose is to provide services or professional advice. The employee contribution must be withheld by the employer from the corresponding benefits paid to its employees.

The law also imposes the obligation on certain productive units, companies and establishments to employ and train or cause the training of certain number of adolescents.

4.3 Employment Payment System (formerly called “Unemployment Insurance”)

The contribution for the employment payment system must be calculated as a percentage of the employee’s normal salary, which in any event cannot exceed the equivalent to 10 urban minimum monthly salaries. Employers must contribute an amount equal to 2 percent and employees must contribute 0.5 percent.

The employee’s contribution must be withheld by the employer from the normal salary paid to the employee.

4.4 Housing and Habitat Payment System

Both employers and employees must contribute to the Housing and Habitat Payment System. The employer must contribute an amount equal to 2 percent of the employee’s total monthly salary, and is required to withhold and pay an amount equal to 1 percent of the

employee's total monthly salary. Under the first Law on the Housing and Habitat Payment System, it could be construed that these contributions had to be calculated on the basis of the employee's normal salary and that the basis for said calculation had to be limited to a maximum taxable base of 10 urban minimum monthly salaries. However, the National Housing and Habitat Bank, which is the government agency in charge of administering this payment system, construed said first law in the opposite manner, attempting to collect these contributions on the basis of all salary earned by the employee every month, without limitations, and the recently published new social security legislation relating to the Housing and Habitat Payment System adopted this latter view and imposed these contributions on the basis of the employees' total salary without limitations.

4.5 Occupational Safety and Health Payment System

This system is currently regulated by the LOPCYMAT. According to this law, employers will be required to contribute to the Social Security Treasury from three quarters of 0.75 percent to 10 percent of their employees' salaries, depending on the risk involved in their activities. However, because the Social Security Treasury has not been created, this contribution is not yet required of employers.

In our opinion, this contribution should be calculated on the basis of the employee's normal salary and should be limited to a maximum taxable base of 10 urban minimum monthly salaries.

5. Types of Labor Contracts

5.1 Overview

While it is not legally mandatory to have a written contract to establish an employment relationship, and while an employee without a written contract will be entitled to the same minimum mandatory benefits under the law, it is generally advisable to execute individual employment agreements with each employee to clearly establish the terms of the relationship. In particular, the new OLWL provides that in the absence of a written agreement, the allegations of the worker

concerning the contents of the agreement will be considered truthful unless there is evidence to the contrary. Among the items that should be covered in the contract are the following:

- (i) Name, nationality, age, marital status, and domicile and address of the employee and the employer
- (ii) When the employer is a legal entity, its denomination and domicile, and the identification of the individual representing the employer
- (iii) The position to be performed by the employee and a detailed description of service or services to be rendered
- (iv) The date of commencement of the employment relationship
- (v) An explicit indication of whether the contract is for an indefinite term, for a stated term or for a specified work
- (vi) The duration of the contract when it is for a stated term
- (vii) The work or service to be made, when it is a contract for a specified work
- (viii) The duration of the ordinary work day and work week
- (ix) The salary or the manner to calculate it, as well as its place and form of payment, and all other benefits to be received
- (x) The place where the services will be provided
- (xi) Reference to collective bargaining agreements or collective accords to be applied, as the case may be
- (xii) The place where the agreement is entered into
- (xiii) Any other lawful terms and conditions agreed upon by the parties

(xiv) The other provisions mandated by the regulations to the OLWL

The employer must create a record in a book to be kept in accordance with the regulations to the OLWL, indicating the date and hour in which one of the originals of the written employment contract was delivered to the employee. The other original must be kept by the employer from the commencement of the employment relationship through the date on which the statute of limitations for the exercise of labor actions expire.

There is a presumption under Venezuelan law that an employment relationship is for an indefinite term, with the underlying objective of assuring job stability and security for employees. Therefore, unless the nature of the services to be performed requires a temporary contract and the parties agree to a temporary contract, the employment relationship will be considered for an indefinite term. The different types of individual employment agreements generally provided for in the OLWL are: (i) the employment agreement for an indefinite term, which, as mentioned above, is the general rule; (ii) the employment agreement for a specific work; and (iii) the employment agreement for a stated term. Each of these types of contracts is discussed below.

5.2 Individual Employment Agreement for an Indefinite Term

The execution of this type of contract implies that the labor relationship will be permanent or of indefinite duration. In principle, if the employee has job stability, this type of contract may be terminated by the employer only for a justified cause, as provided for in the OLWL.

5.3 Individual Employment Agreement for a Specific Work

A contract for a specific work may be executed only if the nature of the services to be performed so requires. For example, this type of contract is used for a specific work such as construction or remodeling of a building. This type of contract automatically terminates once the specific work has been completed.

5.4 Individual Employment Agreement for a Stated Term

This type of contract may be executed only when the services to be performed fall within one of the three cases explicitly provided for in the OLWL. These cases are: (i) when the nature of the services is temporary, (ii) when a Venezuelan is hired to perform services outside of Venezuela, (iii) when the employee is retained to temporarily and legally replace another employee (e.g., to replace an employee on a temporary leave of absence), and (iv) when the work for which the employee was hired has not been finalized and the employer continues to require the employee's services, whether from the same employee or from another employee. This type of contract automatically terminates once the specified term agreed upon has elapsed.

6. Termination of Employment and Severance Payments

6.1 Overview

Individual employment relationships may be terminated in Venezuela by either: (i) the employer's unilateral decision (or dismissal), which in turn may be for cause or for no cause; (ii) the employee's unilateral decision (or resignation), which in turn may be for cause or for no cause; (iii) mutual agreement between the parties; or (iv) for causes beyond the parties' will. Temporary employment relationships, such as those arising from employment agreements for a specific work or for a stated term, automatically terminate upon completion of the work or the lapsing of the term, respectively.

6.2 Dismissal with Cause

The dismissal of an employee will only be deemed for cause when it is based on any of the following causes set forth in Article 79 of the OLWL (or in any other law or legal provision regulating this matter):

- (i) Dishonesty and immoral behavior at work
- (ii) Violence, except in case of legitimate defense

- (iii) Insults or serious disrespect and lack of consideration due to the employer, his representatives, or members of his family living with him
- (iv) Willful act or serious negligence that affects the safety and hygiene of work
- (v) Omissions or imprudent acts that seriously affect the safety and hygiene of work
- (vi) Three business days of unjustified absence from work in one month. The regulations to the former Organic Labor Law of 2006 (which are still in effect to the extent they do not contradict the OLWL) provide that it shall be considered a breach of the obligations imposed by the employment relationship for the employee to arrive late for work four times in one month.
- (vii) Material damage, whether intentional or through gross negligence, to machinery, tools and work utensils, company furniture, raw materials or finished or unfinished products, plantations, and other assets of the employer
- (viii) Disclosure of manufacturing, fabrication, or procedural secrets
- (ix) Serious breach of the obligations imposed by the employment relationship
- (x) Labor or sexual harassment
- (xi) Abandonment of work (as defined in the OLWL)

The employer has a term of 30 consecutive days in which to dismiss the employee from the time it learned or should have learned of the employee's serious breach. Failure to do so will result in the forgiveness of the fault, and the entitlement to dismiss for that cause will cease. The employer must duly notify the competent labor court regarding any justified dismissal within five business days of the date

of the dismissal; otherwise, the dismissal in principle will be deemed to be unjustified.

6.3 Justified Worker's Resignation. Constructive Dismissal

The worker may terminate his employment relationship for cause when the employer incurs any of the following faults contemplated in Article 80 of the OLWL:

- (i) Dishonesty
- (ii) Any immoral act that offends the worker or members of his family living with him
- (iii) Violence
- (iv) Insults or acts showing serious disrespect and lack of consideration due the worker or members of his family living with him
- (v) The substitution of the employer when the worker considers it inconvenient to his interests
- (vi) Omissions or imprudent acts that seriously affect the safety or hygiene of work
- (vii) Any act that is a serious breach of the obligations imposed by the employment relationship
- (viii) Labor or sexual harassment
- (ix) When after being dismissed without cause while enjoying labor stability and, after reinstatement is ordered, the employee decides to terminate the employment relationship
- (x) Any act that constitutes a constructive dismissal

According to the OLWL, the following are deemed circumstances for constructive dismissal:

- (i) The employer's demand that the worker perform a type of work that is overtly different from that which he is obligated to perform under contract or by law, or which is not compatible with the worker's dignity and professional capacity; or that the worker render his services under conditions that imply a change of residence, except when this was agreed upon in the employment agreement or when the nature of the work implies successive changes of residence for the worker or if the change is justified and does not cause any impairment to the worker
- (ii) A salary reduction
- (iii) Transferring the worker to an inferior position
- (iv) Arbitrary change in the work schedule
- (v) Other similar events that alter the existing work conditions

On the contrary, the following will not be deemed constructive dismissal:

- (i) Return of the employee to his primary position, after being subject to a trial period in a higher position. In this case, the trial period cannot exceed 90 days
- (ii) Return of the employee to his primary position after having performed, on a temporary basis and for a term not exceeding 180 days, a higher position due to the absence of the person holding such position
- (iii) The temporary transfer of a worker, in case of emergency, to an inferior position within his own occupation and with his previous salary, for a term not to exceed 90 days

Any worker who decides to resign for cause may do so within a term of 30 consecutive days after the date on which he became, or should have become, aware of the employer's fault; otherwise, such fault shall be deemed to be forgiven. A worker who resigns for cause is entitled to the same indemnities as set forth in the OLWL for cases of unjustified dismissal.

6.4 Dismissal for no cause and absolute labor stability

All workers, with the exceptions of senior or upper management employees and employees hired for an indefinite term having no more than one month of service, enjoy absolute labor stability and may not be dismissed without just cause. The unjustified dismissal of such workers is null and void, but the affected employee may elect or choose not to be reinstated to his or her previous position and, instead, to receive payment of the additional indemnity for termination of the employment relationship for reasons not attributable to the employee described in the following paragraph.

Indemnity for termination of the employment relationship for reasons not attributable to the worker

When the employment relationship terminates for reasons not attributable to the worker, or when the worker is dismissed without cause and elects not to be reinstated, the worker is entitled to an indemnity equivalent to the value of his or her seniority benefits. Back pay could also attach, depending on the specifics of the case.

6.5 Restrictions on Dismissals

Mass Dismissal

According to Article 95 of the OLWL, a dismissal is deemed a mass dismissal when it affects 10 percent or more of the workers in a company with more than 100 workers; 20 percent or more of those in a company with more than 50 workers; or 10 or more workers in a company with less than 50 workers, within a term of three months, or a longer period (which the Regulations to the OLL appear to limit to a

maximum of six months) if, in the opinion of the Ministry of the People's Power for Labor and Social Security ("Ministry of Labor"), the circumstances are critical. The Ministry of Labor can suspend mass dismissals and order the reinstatement of dismissed workers with the payment of their back salaries and benefits.

Special Labor Protection (Bar Against Dismissal, Deterioration of Conditions and Transfers)

There are certain cases when workers cannot be dismissed, transferred or their conditions deteriorated without just cause previously authorized by the competent Labor Inspector through a special procedure established for this purpose, in which the employer must prove cause or the worker's serious fault or breach. Workers who enjoy this special protection are, among others (the following list is not exhaustive), the following:

- (i) Workers who are promoting the legalization of a workers' union
- (ii) Certain members of the board of directors of the workers' unions (the number of workers protected varies according to the size of the company)
- (iii) All interested workers during their unions' election processes
- (iv) All workers interested in the negotiation of the collective bargaining agreement
- (v) All workers interested in a lawful collective labor conflict
- (vi) Workers who have been elected as prevention delegates for occupational health and safety purposes
- (vii) Workers whose employment relationship is suspended for a lawful cause, such as sickness or accident, among others
- (viii) Pregnant women and the respective father of the child

- (ix) Male and female workers for two years after becoming parents or adopting a child of less than three years of age.

There is also a special labor protection implemented through a Decree issued by the national executive. This special protection was originally enforced as of the end of April 2002, and has been continuously extended since. Under the current Decree, which in principle is to be effective until 31 December 2014, all employees in the private sector are protected except for: (i) upper management employees (“*trabajadores de dirección*”); (ii) those who have less than one month of service; and (iii) seasonal or occasional employees.

6.6 Settlement Agreements

As a general rule, workers cannot waive their rights. However, it is possible to enter into individual labor settlements to resolve any differences existing between an employer and a worker, subject to the following general requirements. To be valid, a labor settlement must be made in writing, setting forth a detailed description of the facts that motivate it and the rights included therein. It must be executed before the competent labor official (labor inspector or labor judge), after the employment relationship has been terminated. Agreements involving occupational accidents or illnesses additionally require that the amount of the settlement be equal to or higher than the amount set forth in an expert report issued by the National Institute for Occupational Prevention, Health and Safety (“*INPSASEL*”), at least if executed before the Labor Inspector’s Office.

7. Collective Labor Relations and Unions

7.1 Overview

The OLWL recognizes the freedom of workers and employers to unionize, as well as the right to exercise collective actions, including the rights to collective bargaining, to file collective grievances and to strike under certain terms and conditions.

7.2 Unions

Unions in Venezuela are voluntary organizations classified as employee unions and employer unions. In turn, employee unions are classified as follows:

- (i) Company unions, which organize workers of a given company or firm
- (ii) Professional unions, which organize workers of a specific profession or occupation
- (iii) Industry unions, which organize workers of a specific type of industry
- (iv) Sector unions, which organize workers of a specific commercial, agricultural, production, or service sector

Unions are free to form federations, and federations can organize confederations.

Unions require registration with the competent branch of the Ministry of Labor. Under the new OLWL, there will be a National Registry of Unions, commencing in January 2013. Unions must adjust their bylaws to the provisions of the new OLWL, and they have until 31 December 2013 to do so (currently, this term has been extended in practice, though with certain restrictions or conditions).

7.3 Collective Bargaining Agreement

The Collective Bargaining Agreement (“CBA”) is the agreement executed by and between one or more workers’ unions and one or more employers, or one or more employers’ unions or associations, with the purpose of establishing the conditions according to which work is to be performed and the rights and obligations of the parties thereto.

In order to be valid and enforceable, the CBA must be in writing and has to be filed with the labor inspector's office of the jurisdiction. Under the OLWL, a CBA may not be agreed upon for more than three years or for less than two years. After it has expired, its economic, social and union provisions (at a minimum) will continue in full force until a new CBA replacing the former one becomes effective. The expired CBA is the basis for the negotiation of a new CBA.

8. Strikes

8.1 Overview

The OLWL defines the strike as the collective suspension of the work by the workers interested in a given labor conflict. The objectives of a strike are limited to the following: (i) to demand the modification of employment conditions; (ii) to require compliance by the employer with an existing CBA; (iii) to oppose against the adoption of certain measures affecting the workers; or (iv) to support another strike of workers of the same occupation, craft, profession, or trade.

During the strike, the employer is not required to pay the workers' salaries. However, the time elapsed during the strike will be computed as part of the workers' seniority. In addition, during a collective labor conflict, the participating employees are protected against dismissal, transfer or the deterioration of conditions without cause previously authorized by the labor inspector. If a protected employee is in serious breach of his duties, the employer may dismiss the employee after seeking and obtaining authorization to dismiss him or her from the Labor Inspector, for which a petition must be filed within 30 days following the date on which the employer learned or should have learned of the employee's breach.

8.2 Strike Procedure

A union planning to strike must comply with certain requirements and procedures set forth in the OLWL.

Even during the strike, certain employees are still required to work, such as, for example, those who provide services whose stoppage may harm the population (as determined by the regulations); those who provide services necessary for the preservation and maintenance of the machinery whose stoppage may harm the subsequent recommencement of the work or expose them to serious deterioration; and those in charge of preserving the safety and preservation of the workplace. In addition, workers providing services in a ship may not strike during navigation. Similarly, workers providing services in aircraft or vehicles may not strike in places different from those where they have their operations' base or those that constitute terminals in their itinerary within the country.

If the strike is such that by its extension, duration or other serious circumstances places the life or security of the population or a portion thereof in imminent danger, the Ministry of Labor may provide for the recommencement of the work and submit the matter to arbitration by a motivated resolution.

9. Labor reform

The OLWL has been published quite recently (7 May 2012) and it contains several changes to the provisions of the former OLL. While this overview refers to some of the new provisions contained in the OLWL, it is advisable to review the entire OLWL in order to take note of all the several changes that it introduced in Venezuela.

This overview presents the reader with an approximation and brief understanding of the Venezuelan labor and social security legislation. It should not be considered as a legal opinion, and we consider it necessary, and we advise, to consult with labor lawyers to analyze and assess any given situation, under the individual circumstances that relate to each case.

The Venezuelan Labor, Employment and Employee Benefits Practice Group is at your entire disposition to extend any comments or explain more thoroughly the matters briefly referenced above.

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