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Overview of Labor and Employment Law in Latin America

Abstract
This publication has been prepared for clients and professional associates of Baker & McKenzie. It is intended to provide only a summary of selected legal developments. For this reason the information contained in this publication should not form the basis of any decision as to a particular course of action; nor should it be relied on as legal advice or regarded as a substitute for detailed advice in individual cases. The services of a competent professional adviser should be obtained in each instance so that the applicability of the relevant legislation or other legal development to the particular facts can be verified.

Keywords
Latin America, labor law, employment, public policy, legislation, labor relations

Disciplines
Labor and Employment Law

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Latin America

BAKER & MCKENZIE

Overview of Labor & Employment Law in Latin America

2008

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The Law is stated, except where otherwise indicated, as of April 2008.

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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 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 in the contract.

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

1.2. Trial Period

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

During the 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:

(i) Fixed-term contracts: available only when the end of the term is certain. The minimum hiring period is one (1) month and the maximum is five (5) years.

(ii) Contingent term contracts: available only 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 and 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 one year, the employee will be entitled to 50% of the regular severance payments payable to employees who, under an undetermined employment contract, 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 of 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 or unemployed youth. There are three alternatives for internships and each one has different rules and proceedings: (i) Local programs (such as *"Aprender Trabajando"* in the City of Buenos Aires); (ii) Law 25,165 (Executive Orders 1200/99 and 487/00); and (iii) Law 25,013 (Executive Order 1,227/01). Under alternatives (i) and (ii), employers must enter into an agreement with an educational institution or organization (e.g., a university), establishing an internship program to be performed at the employers' premises. The term of the internship varies in each alternative, as well as the work schedule.

2. Work Hours

The ECL and the Working Hours Law No. 11,544 provide for a work limit of eight (8) hours per day and 48 hours per week. A regular working schedule would consist, therefore, of an equal distribution of six (6) working days or eight (8) 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 (9) 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, 1:00 p.m.) are entitled to an additional 50% 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% payment. The team and shift working system is excluded from the overtime system described above.

Top employees and general managers are not subject to mandatory rules regarding working hours. In other words, they 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 (2) calendar days;

(ii) marriage: ten (10) calendar days;

(iii) death of the spouse or concubine, children, father, or mother: three (3) calendar days;

(iv) death of a brother or sister: one (1) calendar day; and

(v) examination at a high school or university: two (2) calendar days per examination, with a maximum of ten (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., underage children), the period during which those employees are entitled to payment may be extended from six to 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 (1) 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 a 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 were 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) 28 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 October 1 and April 30 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 May 31.

Failure to take vacations may not be compensated, unless it is 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 the subsequent year will not be enforceable.

3.4. Holidays

Argentine statutes provide for 12 national holidays (i.e., January 1, March 24, April 2, Good Friday, May 1, May 25, June 20, July 9, August 17, October 12, December 8, and December 25).

Employees are paid for 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% 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 or December 24).

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, and the like. However, certain limits apply: they may not give salaries below the minimum wage fixed by the Government, which at present, amounts to AR$ 980 per month (or AR$4.90 per hour).

Salaries must at least be 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 June 30 and December 31. 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 which employees receive though the said plans would be, in principle, of a remunerative nature. Thus, these payments are subject to social security contributions and income taxes.

4.5. Fringe Benefits

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

However, certain fringe benefits specifically established in the law are not considered salary and therefore are not subject to such contributions. The value of these fringe benefits should not be taken into account when estimating severance payments.

According to a recent change in the law, lunch tickets and food vouchers (which had been non-remunerative) are to be transformed into remuneration on a progressive basis.

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.

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

Non-remunerative fringe benefits include the following:

- 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 work place;
- 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; and

- Use of housing owned by the employer, located in neighborhoods or premises surrounding the work place, or leases in cases where access to housing is very difficult.

Fringe or 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, and the like. 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 has the burden of proof.

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

When an employee resigns or is dismissed for just cause, 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). Layoffs 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 on account of *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 (3) months must receive a prior termination notice fifteen (15) days in advance of their dismissal.

(b) Employees whose seniority ranges from three (3) months to five (5) years must receive the termination notice one (1) month in advance of their dismissal.

(c) Employees whose seniority exceeds five (5) years must receive the termination notice two (2) months in advance of their dismissal.

Employees must give their employers a termination notice fifteen (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, employers must then pay the terminated employee in lieu of such omitted notice. This payment is 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 ("S.A.C.");

Termination penalties:

(iv) Mandatory severance pay in lieu of prior termination notice, including completion of the month;

(v) 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% 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 (4) 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. 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:

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

Further, employers must pay an additional 8.33% as the 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 ("S.A.C.").

In each calendar year, employees are entitled to such S.A.C., which is equivalent to one-twelfth (1/12) of the total amount earned by the employee during such year, calculated as follows:

- This S.A.C. is payable in two semi-annual installments due on June 30 and December 31.
- The amount of each installment is equal to one half (1/2), equivalent to 8.33%, 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 (1/2) of the employee's monthly salary;

(b) Those who have between three months and five years of seniority should be compensated with one (1) monthly salary; and

(c) Those who have more than five years of seniority should be compensated with two (2) 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%, as the 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.

(v) Mandatory Severance Pay Based On Seniority

Employers must also pay accrued seniority for the unfair dismissal.

The ECL rules that this payment should be made by computing one (1) 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 (1) actual gross monthly salary.

However, the Supreme Court of Justice issued on September 2004 an important precedent. 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. vs. AMSA S.A. re. dismissal," the Supreme Court of Justice set a new criterion to 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% the basic salary to be factored for this severance based on seniority. Therefore, the salary with a reasonable cap would be 67% 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% as 13th month salary on 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

Below, we describe these cases that 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 clientele. This special compensation is only due to those traveling salesmen whose seniority exceeds one (1) year.

In these instances, the employer must pay 25% 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 (1) term, the employee will be entitled to 50% 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 seven and a half (7 1/2) 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% 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 (3) months before or six (6) 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 the consent of the same.

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 a special compensation for damages, equal to the salaries corresponding to the remaining term of representation plus one year of salaries.

(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/her termination; or (2) the employee sends the copy of said demand to the *AFIP* (National Tax Authority) 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 shall have 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% of all accrued remuneration during the employment relationship but under no circumstances shall pay before December 25, 1989. Under no circumstance shall this compensation be lower than three (3) 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% of all accrued remuneration within the hiring date and the actual registration date, but under no circumstances shall pay before December 25, 1989.

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

In addition, Section 15 provides that if the employee is being terminated for any reason whatsoever two (2) years after his or her demand of registration, the employer would also have to pay the terminated employee an additional 100% 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 a special compensation equivalent to an additional 100% 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. Because Argentina's current legislation does not provide for punitive damages, the general rule is that a judgment based on Civil Law provisions should not exceed AR$ 50,000.

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

There has not been any significant number of judicial cases brought forth with 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.

The Labor Reform Law No. 25,013 sets forth a presumption of malicious behavior when employers do not pay the severance in due course. The Courts must apply the penalty, which shall benefit employees.

Likewise, 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%.

(viii) Failure to provide employment certificates

Upon termination of the labor relationship, the employer has 30 calendar days to give two (2) 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 (2) 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 (3) 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 a 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 that is being paid may later on become a disputed issue. Waivers and/or releases executed between employees and their employers related to disputed rights shall be valid and enforceable only if signed before the government officials of the labor authority (i.e., Ministry of Labor) and approved by such authority. Their execution is highly recommendable.

Due to the restrictions referred to above, and in order to avoid the filing of the mentioned procedures, employers have been conducting terminations by

executing mutual agreements under Section 241 of the ECL. In practice, employers estimate the amount that would be owed to these employees if they were to be dismissed without cause, include: (i) the amount that they could be entitled to as unemployment allowance (e.g., which may amount to a maximum of AR$ 3060 during 12 months, depending on each employee's seniority and remuneration); (ii) a grossing-up of the income tax withholdings on the severance for seniority; and (iii) additional consideration.

Mutual separation agreements are conducted and executed by signing before a notary or labor authority. The labor authority does not approve such agreements; the release clause therefore, is unenforceable. However, the amount paid can be allocated for the payment of any outstanding debt.

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, and the like.), workers 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, and the like.

7. Life Insurance

Employers must hire and pay the premium for a collective life insurance policy in favor of their employees. As of October 2005, the minimum coverage per employee is AR$ 6,750 and the monthly premium paid by the employer is AR$ 0.192 per each AR$ 1,000 insured.

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

8. Workers' Compensation

The 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. A.R.T. Employers may freely choose any A.R.T. duly registered.

A.R.T. 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.

The Law provides for compensations in **cash** and in services or goods:

(a) Employment risks to be compensated by *A.R.T.* in **cash** are: temporary disability, partial permanent disability (up to 66% disability), total disability (66% or more disability) and death.

(b) Employment risks to be compensated by A.R.T. with services or goods are: medical and pharmaceutical assistance, prosthesis, rehabilitation, employment training for relocation, and burial services.

Except for certain special cases based on civil law, no other action will be admitted against employers based on a labor-related accident. Civil actions are not admitted against employers or their A.R.T. However, many injured employees are currently conducting discussions in our labor courts on the validity of this shield system, whereby employers are exempt from their civil liability.

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% employees' contribution and a 6% 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.

Employees can choose their future retirement and pension system between: (a) a public system; or (b) a combination of public and capital-based system. This last alternative consists of enrolling in competing and privately-managed pension companies named A.F.J.P., instead of enrolling with the state pension agency.

Employees' contributions finance some benefits that are common to both systems: an earnings-related disability pension and an earnings-related death benefit. The significant difference is that those choosing the public regime are entitled to an earnings-related retirement pension (i.e., the amount of the

pension depends on their earnings level during employment), whereas those opting for the private system regime are entitled to a retirement pension which depends on the mandatory and voluntary amounts contributed to the pension fund administered by A.F.J.P. and the success of its investments.

In general terms, the social security system provides for the payment of retirement benefits to men who are sixty five (65) years of age and women aged sixty (60). Nevertheless, women have an option to continue working until they are sixty five (65). To be entitled to retirement payments, retired employees must submit evidence of having made social security contributions for the last thirty (30) years.

An exception is made by Law 25,994, which provides an early retirement benefit to unemployed people, available for men who reach sixty (60) years of age and for women aged fifty five (55). In both cases, retired employees must submit evidence of having made social security contributions for the last thirty (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**	
	Pay-as-you-go (Public) and Trust Fund (Capitalization) (in%)	**Commerce and Services that invoice more than AR$ 48 millions (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
Family Allowances (Law 24,714)	---	5.56	4.44
Unemployment Fund (Law 24,013)	---	1.11	0.89
Public Health Insurance (Law 23,660)	2.70[**]	6.00[**]	6.00[**]
Medical Coverage (Law 23,660 and 23,661)	0.30[**]		
TOTAL	**17.00**	**27.00**	**23.00**

[*] Amounts exceeding the cap of AR$7,256 are not subject to contribution.

[**] Amounts exceeding the cap of AR$4,800 are not subject to contribution.

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 upon their activity and turnover amount: 27% if the employer is engaged in the provision of services or in commercial activities and the invoiced amount exceeds AR$48,000,000; and 23% for the rest of the employers.

The A.R.T. (Workers' compensation or Labor Risk Insurance Company) premium is not included in the abovementioned contribution rates. 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% of the payroll.

Employees' contributions to the retirement system chosen by the employee is of 17% whether said employee chose for either (i) the private regime (capitalization through A.F.J.P.); or (ii) the public regime (public retirement and pension fund system).

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

The cap to calculate the employee's contribution for the Retirement Fund is AR$6,750 and for the others contributions AR$4,800 per month.

The cap to calculate the employers' contribution for the health and medical coverage and for the ART is AR$4,800. 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 contribution may vary depending upon the annual income (i.e., less than AR$ 15,000 between 15,000 and 30,000 and more than 30,000).

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 as well as 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

Enacted in 1988, the Federal Constitution contains an entire chapter dealing with "social rights" (Le., employees' rights), which elevates rights such as maternity and paternity leaves, annual paid vacations, and several other rights, to the constitutional level. Technically, all labor rights are primarily set forth in the Federal Constitution, and secondarily in the Labor Code.

In principle, 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) 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. 3.999/61, which regulates the work performed by trainees.

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; (c) for compensation. If these conditions are present, an employment relationship is likely to be acknowledged. In Brazil, the employment relationship still 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 Employment 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 temployment 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.

Provisional Measure No. 421, issued in February 2008, provides that employees in Brazil are entitled to a minimum wage of R$415.00 per month (equivalent to R$13.83 per day and R$1.88 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 8 hours per day and 44 hours per week. This means that if the employees work 6 full days in the week, the daily working hours should be limited to 7 hours and 20 minutes per day. On the other hand, if the employees work only 5 days in the week, the daily working hours could be extended to 8 hours and 48 minutes. The parties may agree to a shorter working hour.

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

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

2.3 Vacation Days and Vacation Premium

In Brazil, every employee is entitled to an annual 30-calendar day's 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 the 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 1/3 of the monthly salary as a 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% of his or her normal wage.

- New Year's Day (January 1);
- Carnival (a movable holiday);
- Easter (a movable holiday);
- Martyr's Day (April21);
- Labor Day (May 1);
- *Corpus Christi* (a movable holiday);
- Brazilian Independence Day (September 7);
- Patron Saint of Brazil (October 12);
- All Souls' Day (November 2);
- Proclamation of the Republic Day (November 15);
- Christmas Day (December 25).

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

2.5 Christmas Bonus (13th salary)

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 of each year and the second installment shall be paid on or before December 20. 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 December 19, 2000, regulates the employees' share in the company's profits or results, as an instrument to integrate the capital and the workforce and as a 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. 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. 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.

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 5 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.

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 health care plans and life insurance policies to their employees.

Before Law No. 10,243 of June 19, 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 most usual fringe benefits granted to the employees (i.e., health insurance, pension fund, life insurance, education, etc) from their remuneration.

4. Social Security Benefits

According to the Pension Law, all employees working in Brazil must be covered by the INSS 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 because of the length of contribution to the Social Security System: 30 years for women; 35 years for men. Second, it is possible to retire because of age: women must be 60 years old; men 65 years old. Finally, it is important to mention that the age retirement is only allowed after 15 years of contribution.

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

Employees' social security contributions paid over salary:

Up to R$911.70	8% of salary
From R$911.71 to R$1,519.50	9% of salary
From R$1,519.50 to R$3,038.99	11% of salary
More than R$3,038.99	Fixed value of R$334.28

Employer's social security contributions paid over payroll:

Pension Fund Contribution - INSS	20.00%
Workers` Insurance (SAT)	3.00%
Education Contribution	2.50%
INCRA Contribution	0.2%
SENAI Contribution	1.20%
SESI Contribution	1.50%
SEBRAE Contribution	0.60%

The main charge to be collected by the company to the social security institute refers to retirement at a rate of 20%. In addition, employers must also pay the Insurance Against Labor Accidents ("SA T") and other social contributions provided for by law (such as the SEBRAE and INCRA contributions).

The rate of the other social contributions mentioned above shall depend on their activity, regardless of the number of employees and the company's income. The employees' contribution shall depend exclusively on their salary.

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% 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.

In addition to the monthly contribution, in case of termination without cause, the company must pay a fine of 40% of all amounts existing in the employee's FGTS account on the termination date, plus another 10% over the FGTS balance, for monetary correction purposes.

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 the 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 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 definite term agreements

No indemnity is payable to the employee upon expiration of the term defined in the labor contract. However, if before the expiration of the term defined in the labor contract, the employee is dismissed without just cause by the employer, the employee will be entitled to an indemnification of half the salary due for the unexpired portion of the contract. On the other hand, if the employee terminates the contract, he or she must indemnify the employer for any loss resulting from this breach of contract.

7.3 Termination of indefinite term agreement without cause

The termination of an employee, without cause, should be preceded by a written prior notice of at least 30 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 relation 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, equivalent to one month's compensation of the employee, except if the notice is given at least 30 days in advance. If the prior notice is given at least 30 days in advance, 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 vacation equal to one month's salary per year of employment. In Brazil, employees are entitled to a 30 days' 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) Christmas bonus equal to 1/12th of the employee's monthly salary per month of employment, counting from the relevant January 1 to the termination date; and

(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.

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 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 the 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; and

(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, the 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; and

(b) Accrued 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, the employer must grant it. 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% to 5% 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 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 the 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% higher than that of any other employee in the department.

The "employee occupying a position of trust" is not required to record his presence 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, annually negotiate 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 on 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.

lf 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 distinction under US labor laws 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.

One group of workers that is expressly excluded from the "dependent worker" classification is the class of individuals performing services in their own home or in some other place freely chosen by them. These "homeworkers" are not covered by the Labor Code and are not entitled to pensions and other social security benefits available to dependent workers. They may, however, enroll in and contribute to government-sponsored social security programs as 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. 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 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 statutorily recognized just cause. Chilean law does not permit the parties to stipulate a term of employment for longer than one year, except in the case of managers and professionals, who may enter into a 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.

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.

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; and
- 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 in written form 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

As of January 14, 2007, an amendment to the Chilean Employment Code has introduced important changes to the regulation of outsourced employment, performance of temporary service companies and contracts of temporary employment supply. The new law establishes a clear difference in the nature and legal treatment of Outsourcing and Temporary Personnel Supply Services. Individuals rendering personal services on a periodic or permanent basis who do not fall under these categories may be regarded as Company's direct employees.

1.5 Hours per Week

Maximum working 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 50%-100% premium. In any case, overtime may not exceed two hours per day.

1.6 Remuneration

Employers must distribute 30% of profits to workers or pay an annual bonus of 25% of annual employee income, in the latter case up to a maximum of 4.75 times the minimum monthly wage (in sum, approximately US$1,500 per annum).

1.7 Social Security

Social Security is mandatory in Chile and equals approximately 20.5% of gross monthly salaries, which the employer must withhold and remit to the corresponding social security and health insurance institutions. For this purpose, the maximum salary subject to mandatory social security contributions is 60 Development Units (approximately US$2,650).

Foreign nationals who work in Chile may be exempt from paying social security contributions in Chile, provided they are registered in a social security system in their home country, granting coverage at least for disability, illness, pension and death. In order to be covered by this exemption, the workers must declare their intent in the Chilean employment contract.

1.8 Employment of Local Labor

Companies with more than 25 employees must employ Chileans or foreigners resident in Chile for five years or more making up at least 85% of the workforce. Foreign technicians with special skills not available in Chile are excluded from this requirement. Pursuant to the US-Chile Free Trade Agreement, US subsidiaries may hire American personnel for up to 18 months without the above limitation.

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 authorized 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 women who have just given birth, enjoy special job security protection.

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 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 should receive a 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 have been authorized to represent the employer or who have 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 August 14, 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 90UF[1] (approximately US$4,000) 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.

1. 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, 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.

1 The UF or *Unidad de Fomento* (Development Unit) is a monetary unit indexed daily to inflation by the Chilean government. As of March 31, 2008, 1UF was equivalent to Ch$19,822 (approximately US$45).

The 2001 amendments to the Chilean Labor Code have significantly changed employer obligations in the context of employee terminations, including increasing the severance penalties imposed when an employer's dismissal of an employee is unjustified, undue, or incorrectly characterized.

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.

2. 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, however, to an amount equal to 90UF. If notice of termination is provided, a copy must be sent to the Labor Directorate.

3. Termination Settlement (*Finiquito*)

The termination settlement or *'Finiquito'* is a written notice of termination through which an employee is notified of the conditions thereof, the reasons for the termination, and itemization of the social benefits to be received by the employee as part of the termination (certain compensation, indemnification for unjustified dismissal without prior notice, payment of proportional vacations, and the like). 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 authorities, 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 AFP[2] system, Chilean law has developed a system of substitute indemnity, which is effectively a form of indemnity insurance. This indemnity is financed by monthly allocations from the employer of at least 4.11 percent of the employee's monthly wage or salary. The salary to which this percentage applies is limited to 90UF. Contributions to this fund can be made only by mutual, written agreement of employer and employee, and only between the employee's sixth and eleventh year 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 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 are found to have committed or been involved in the following: (1) immoral conduct, including sexual harassment, (2) destruction of the employer's property, (3) illegal strikes, (4) material noncompliance with contractual terms, (5) abandonment of work, (6) unjustified absence, or (7) other serious forms of misbehavior. When the contract is terminated because of the employee's alleged misbehavior, the employee may claim in court that the employer's allegation is false. If the employee prevails, the employer must pay the indemnity mentioned above plus a surcharge of 30 to 100 percent, depending on the existence of some reasonable grounds for termination and on the gravity of the employee's offense.

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

2.4 Protection From Termination Under the Fuero

A legal doctrine called the "*fuero*" or "immunity privilege" protects some employees (such as union officers, pregnant employees and employees returning from their maternity leave) from termination of employment in certain circumstances.

3. Labor Unions, Collective Bargaining and Strikes

3.1 Labor Unions and Industrial Relations

The National Constitution and the Labor Code guarantee the right of employees 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 areawide basis is an issue that has fueled bitter debate in the National Congress. As a practical matter, however, union power remains limited, and as of 1994, the percentage of nonagricultural workers represented by unions has been relatively small – 16 percent. Union-represented employees are found primarily in midsized 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.

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; and
- to represent workers in the exercise of their contractual rights.

2. Types of Unions

Chilean law recognizes seven types of unions:

- enterprise unions (in which all members are employees of the same employer);
- inter-enterprise unions (in which members are employees of two or more employers);
- unions of self-employed workers;
- unions of temporary workers;
- federations;
- confederations; and
- workers' centrals.

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. The 2001 amendments to the Chilean Labor Code have implemented changes that make it much easier for unions to organize and represent employees.

- In companies with 50 employees or less, a union may be formed with at least eight employees, regardless of the percentage of employees represented.
- In 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 each employee's right 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 be made to succumb to economic pressure against an employer while organizing the employees. If organizing efforts fail, neither the union nor the employees must wait for any prescribed period before again attempting to organize employees at the establishment.

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.

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 to attend to 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 go on leave for one month for collective bargaining. Directors of federations and confederations may go on leave for the entire term of their mandate and for one month after its expiration.

c. Payment for Leave of Absence

A leave of absence is considered hours spent on work, but the wages for these hours are paid by the union. While the employer must preserve the union director's job during the latter's leave, it may fulfill this obligation by giving the director an equivalent job when he or she returns to work.

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 on the day 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; and
- Staff delegates during their respective terms of office and for six months thereafter.

b. Wrongful Dismissal Based on Anti-Union Animus

In addition to increasing penalties for unjustified dismissal generally, the 2001 amendments to the Labor Code have 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. If a Labor Court determines that an employer has unlawfully terminated an employee based on union animus, the employer may be ordered to pay the employee an amount between 3 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 sphere 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 do represent their members in discussions with government 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, employees and employers. Charges of unfair labor practices are heard by the Labor Courts,

which have the power to fine violators. The Labor Directorate maintains a register of unfair labor practice violators and periodically publishes a list of repeat offenders.

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 pressure to prevent their joining a union or to jeopardize 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 in the union members' right to free speech;
- refuses to bargain with a certified union;
- refuses to provide necessary information to a union;
- interferes in the union's activities) by threatening to reduce wages or benefits or to close the facility, or to manipulate the number of employees in the workforce to prevent or interfere in the formation or maintenance of a union;
- interferes in a union's affairs, arbitrarily discriminates between labor unions, or requires an employee to join a union or to authorize wage deductions to cover union dues as a condition of employment; or
- fails to provide certain financial information to unions to facilitate bargaining. (Failure to do so is now an unfair labor practice remediable through the Labor Courts.)

Unfair labor practices may be sanctioned with fines that range from 10 to 150 Monthly Tax Units (1 MTU=US$78). The labor authorities also publish a bi-annual list of companies that have committed unfair labor practices.

2. Unfair Labor Practices by Unions and Employees

Unions or employees commit an unfair labor practice if they

- conspire with an employer to help 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; or
- use moral or physical coercion to induce an employee to join or resign from a labor union or if they interfere in the union members' right to free speech.

Unions or employees also commit an unfair labor practice if they

- disclose an employer's confidential information to third parties; or
- interfere in 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

1. The Duty to Bargain

Generally, an employer has a duty to bargain with any union of its employees who have met the legal requirements for establishing a union. However, employers who have been in operation for less than one year and employers with less than eight employees are exempted from collective bargaining. In addition, the following 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; and
- temporary employees.

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

- managers;
- employees authorized to hire or fire employees; and
- upper-level employees vested with decision-making authority with regard to policies on or certain 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.

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 nonunion 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 production processes), nor may the parties negotiate any matters 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 period after being hired, are not permitted.

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 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.

4. Bargaining Procedure

Formal collective bargaining, which may be carried out at the enterprise level or at multi-enterprise levels, is called regulated bargaining (*negocìacìón reglada*) and is a highly detailed procedure established by 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 bargaining group. The Labor Code establishes a 45-day period for collective bargaining. 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 nonregulated bargaining may be initiated 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 nonregulated collective bargaining, but this process is also available to all employees. When nonregulated collective bargaining fails to result in an agreement, however, the employees may not lawfully engage in a strike. When nonregulated 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

1. Strikes

When the parties to regulated collective bargaining negotiations are unable to reach an agreement, the employees' last resort is to go on 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) will be illegal. In nonregulated bargaining, strikes are illegal.

A strike may not be called while the collective contract is in effect. 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 employees to replace the employees on strike, 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, 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 employees who did not join the strike) must also return within two days. If the remaining strikers fail to return to work within such period, the employer may terminate them for abandoning their work, thus disqualifying them from receiving the statutorily required severance indemnity.

Provided an employer complies with the rules governing replacement employees, including payment of the replacement fee referred to above and which has been included in the 2001 amendments to the Chilean Labor Code, strikers may return to work 30 days after the strike commences.

2. Lockouts

A lockout is defined as the employer's right to prohibit employee access to its premises in case of a strike. A lockout bars plant access not only to striking employees, but to all employees in the plant other than management, persons with the power to hire and discharge employees, and high-ranking personnel with decision-making authority with regard to 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 maintaining normal business operations and functions. 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 not on strike and who are affected by the lockout. When a lockout occurs, it must terminate at the time that the strike begins or on the 30th day after the strike begins, whichever occurs first. Thus, if the strike continues after 30 days of lockout, the employer must terminate the lockout at the end of the 30-day period and reopen the plant. This situation is rare 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 may nonetheless elect a representative known as a "staff delegate." Those who wish to be represented by a staff delegate must fulfill the representational requirements applied to enterprise unions (i.e., representative status) and must not be affiliated with any union.

Like union directors, staff delegates serve for two to four years and play the role of a conduit through which represented employees and the employer communicate and negotiate. Staff delegates may also represent their workers before 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 protection accorded union directors, including protection under the fuero. The fuero covers staff delegates during their terms of office and for six months thereafter.

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 labor contracts, 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 with and quotations to the social security system for health, pension and professional risks); and (iv) regulations and decisions issued by the Ministry of Social Protection and the Labor Courts, among other things.

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. Salary and Mandatory Employee Benefits

2.1 Minimum Wage and Salary Arrangements

There is no legal provision establishing special salary levels, except for the minimum wage.

No employee can earn less than one minimum legal monthly salary. For 2008, it is Col. Pesos $461.500 per month (approximately US$251). Employers are required to pay day workers at least once a week and monthly/permanent employees at least once a month.

Colombian labor law allows two (2) types of salary arrangements: the so-called traditional structure, under which salary and mandatory benefits are paid separately; and the so-called integral salary structure, under which mandatory benefits are already included pro rata in the monthly salary payments. Integral salary must be agreed upon in writing and applies only to employees who earn

more than thirteen (13) minimum legal salaries.[3] It not only compensates for ordinary services but also compensates in advance for 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.

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

- Severance aid ("auxilio cesantía")
- Interests on severance
- Semestral bonus
- Vacation

Employees with integral salary are entitled to the payment of accrued vacation and unused days of vacation.

The omission of paying salary and social benefits can generate a delayed payment indemnity equivalent to one day of salary per day of delay for a period of twenty-four (24) months. If payment is not performed after twenty-four (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 severance aid on a timely basis may be charged with a failure indemnity equivalent to one day of salary per day of delay, counted from February 15 of each calendar year up to the date of termination of employment or until the date of the deposit, whichever occurs first.

2.2 Maximum Hours/Overtime Pay

Under Colombian labor law, 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 (8) hours per day or forty-eight (48) hours per week.

Supplementary or overtime work is the one exceeding the ordinary working hours of the enterprise and, in all cases, the one exceeding the legal maximum

3 For 2008, the minimum integral monthly salary is Col. Pesos $5.999.500 (approximately US$3,270).

working hours (48 hours per week). In no case shall overtime work, daily or nightly, exceed two (2) daily hours and twelve (12) weekly hours. Employers must have an authorization from the Ministry of Social Protection to have their employees work overtime.

Supplementary work, daily or nightly, must be remunerated with a special surcharge, in accordance with the following rules:

Daily overtime work (between 6:00 a.m. and 10:00 p.m.) must be remunerated with a surcharge of 25% over the value of daily ordinary work.

Night overtime work (between 10:00 p.m. and 6:00 a.m.) must be remunerated with a surcharge of 75% over the value of daily ordinary work.

Night work. Regular night work must be remunerated with a surcharge of 35% over the value of daily ordinary work.

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 comply with their labor duties in full and are not entitled to surcharges for supplementary work. Thus, ordinary personnel are those employees subject to the ordinary working hours of the enterprise or to the legal maximum working hours entitled to receive payment of 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.

Colombian labor law allows the parties involved in a labor contract to agree on special flexible rotation 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.

2.3 Vacation Days

All employees (with ordinary or integral salary) are entitled to a vacation. This is a remunerated rest different from that on Sundays and holidays, equivalent to 15 consecutive working days of paid vacation per year of service and proportionally for a fraction thereof, which can only be accumulated for up to four periods. In

the event that the labor contract is terminated and the employee has not enjoyed the corresponding vacation, vacation payment must be included in the final liquidation of salaries and social benefits on the basis of 15 days of salary for each full period of not enjoyed vacation days and proportionally for a fraction thereof.

2.4 Paid Sundays and Holidays

All employees, whether ordinary or management and confidence, are entitled to remunerated rest on Sundays and holidays, as provided for by our Labor Code.

With regard to work on Sundays and holidays, employers must abide by the following rules:

Those employees under ordinary salary, deemed ordinary or management and confidence, personnel shall be remunerated with a surcharge of 75% for work performed on Sundays or holidays.

For employees with ordinary and integral salary, there must be a distinction between occasional and permanent work on Sundays or holidays. When the employee works for up to two Sundays or holidays in a month, it is occasional. He or she is then entitled to, depending on his or her choice, enjoy a day of remunerated rest or receive one day of ordinary salary, in addition to the payment mentioned above (if applicable).

If the work on Sundays or holidays is permanent, that is to say when the employee works for three or more Sundays or holidays in a month, if he or she receives an ordinary salary, the employee is entitled to receive (i) the surcharge explained above and (ii) the remunerated day of rest, which is part of his or her fixed salary.

Employees who are under integral salary and work habitually on Sundays are entitled to a compensatory day of rest. The surcharges are included in the monthly lump sum agreed.

2.5 Semestral 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.

2.6 Severance Aid (*auxilio de cesantía*) and Interest on Severance (*interés de cesantía*)

The severance pay is equivalent to a one month's salary for every year of service and proportionally for fractions of a year. For labor contracts entered into on or after January 1, 1991, the severance aid is payable as follows: (i) as of December 31 of each year, the employer must calculate the severance pay accrued to the employee during the corresponding calendar year, on the basis of his or her one month's salary if the employee worked the full calendar year, and proportionally for fractions of a year. The employer must deposit this severance pay, no later than February 14 of the subsequent year, into the account designated by the employee with a financial entity authorized by the Government to receive and administer such funds. This deposit constitutes the final payment of the severance pay through December 31 of each year; and (ii) upon termination of employment, the severance pay accrued to the employee beginning from January 1 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 (less any partial payment of severance pay that may have occurred during the previous year if authorized by the Ministry of Social Protection).

The interests on severance are equivalent to 12% of the amount of the severance aid per annum. Liquidation of such interests is performed on December 31 of every year, and direct payment must be made to the employee no later than January 31 of the following year. Upon termination of employment, accrued interests on severance must be paid directly to the employee.

3. Integral Social Security System and Workplace Safety

Irrespective of the method of payment or the form of agreed salary, employers must affiliate all their employees (national and foreign) with the integral social security system for health, pension and professional risks, as provided for by Law 100 of 1993. 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.

Monthly quotations have to be made to the three systems, and employers are responsible for the corresponding payment. The contributions to the pension and health systems are shared between the employer and the employee as a percentage of the employee's salary, as follows: 12% by the employer and 4% by the employee, for pension; and 8.5% by the employer and 4% by the employee, for health. The employer covers the total amount of contributions to the professional risks system, which range between 0.348% and 8.7% of the monthly payroll, depending on the risk classification of the company. In addition, the employee has to contribute 1% to 2% of his or her salary as quotation intended for the pension solidarity fund.

The base for setting the amount of integral social security contributions in Colombia is the salary earned by the employee, if he or she receives an ordinary salary. If the employee is paid an integral salary, the base is 70% 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 2008, Col. Pesos $11.537.500).

Employers are subrogated by the social security entities for every health, pension, or professional risk of their employees as long as affiliations and contributions are made in a correct and timely manner. However, the social security system does not subrogate the risk of being condemned to pay a damage indemnity for work accidents or illnesses caused by the employer's guilt.

When employers fail to fulfill their obligation of affiliating with the social security system, they may incur greater costs as they must then assume health, pension and professional 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 required to prepare locations and supply working equipment that guarantees the security and health of their employees. For such purpose, employers with more than 10 permanent employees are obliged to implement Health and Industrial Safety Regulations and create an Occupational Health Program and Committee with the approval of the Ministry of Social Protection.

Pursuant to such obligations and other legal provisions, employers are responsible for preventing professional risks (i.e., work accidents and professional illnesses) in the workplace by, among other activities, providing employees with the necessary industrial and safety equipment as they perform their duties;

administering medical exams periodically; 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 five hundred (500) 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.

When the employer's activity is qualified as high-risk,[4] the employer must contribute an additional 10% of the employee's salary to the pension system.

Pursuant to Colombian labor laws, employees must be covered by a life insurance policy for their first year of service. Thereafter, this benefit becomes extralegal and employers usually obtain collective life insurance policies during the course of the labor relationship. In the case of employers that develop a high-risk business or employees who develop a high-risk job, it is advisable for the employer to keep a life insurance policy in force and affiliate the employees with a collective health plan (which provides better medical services and has a wider coverage than the legal health system).

4. Types of Labor Contracts

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.[5]

Written. All parties must sign on the contract, with a copy executed for each party. The contract should reflect the complete understanding of the parties. It is advisable to enter into a written labor contract, as this document provides evidence of the labor relationship and the terms and conditions agreed upon by 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 contract for a fixed rather than an indefinite term.[6]

4 High-risk activities are expressly defined by the social security regime.
5 Decree-Law 2351, 1965, Article 5.
6 Law 50, 1990, Article 3.

5. Termination of Employment and Separation Payments

Among other circumstances,[7] a labor contract may be terminated by the unilateral decision of any of the parties thereto, whether or not there is proven just cause. The labor contract may also terminate upon mutual consent of the parties.

The just causes to terminate a labor contract unilaterally are those established by law[8] or those offenses of the employee that are defined by the employer as grave actions that give rise to dismissal (said offenses are usually provided for in the internal work regulations, the labor contract 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 labor contract terminates with just cause, the party that takes the decision is not legally obliged to pay an indemnity for dismissal as long as the facts and reasons that motivated the decision are real and can be further evidenced. Depending on the case, termination of employment with just cause must be handled with care and may require a previous special proceeding or further consideration with labor attorneys. In any case, the employer must have serious evidence to demonstrate the just cause and all the documents necessary to support its fair decision in the event of a judicial claim. The employer must prove the reasons for termination while the employee would simply inform the judge that the just cause did not exist.

As a consequence of the unilateral termination of the labor contract without a proven just cause, the employer must inform the employee in writing of its intention to conclude the labor relationship and pay the corresponding legal indemnity.

Historically, this legal indemnity has been considered as a complete payment to compensate for the employee's detriment produced by his or her condition of unemployment. Nonetheless, our Constitutional Court stated in a decision[9] that

7 Article 61 of the Colombian Labor Code, as modified by Article 5 of Law 50 of 1990.

8 Article 7, Decree 2351 of 1965.

9 Ruling C-1507 of November 8, 2000.

the amount of legal indemnity recognized for wrongful termination of a labor contract was not a definite or final payment and that the employees could file a complaint pursuing additional indemnity if they would be able to evidence further damages caused by the unilateral termination of employment.

Although we have no records of labor lawsuits already started as a consequence of this controversial decision, we do believe that labor judges will follow traditional rules of liability in determining the existence of an additional detriment. Under this scenario, the employee has to demonstrate, among other things, the existence and value of the damage and the relation between dismissal and damage, which is really difficult to prove in normal circumstances. Nonetheless, as a consequence of this decision, for every dismissal, there is a high risk of facing a labor lawsuit, with all its representation and administrative costs.

In light of the above, we recommend considering the termination of labor contracts by mutual consent of the parties, formalizing it through a settlement agreement executed before labor authorities. In this event, the employer company will most likely need to pay a settlement bonus in exchange for the employee's signature on the settlement document, giving the employer full release and waiving the possibility of filing a future claim.

If an employee is terminated without one of the proven just causes expressly set forth in the law by way of limitation, the employee is entitled to an indemnity for unilateral termination by the employer. The amount of this indemnity varies, depending on the salary level of the employee and the duration of his or her labor contract.

For contracts covering an indefinite term, this indemnity applies as follows:

For employees who earn less than ten (10) minimum legal monthly salaries (for 2008, Col. Pesos $4.615.000), the indemnity is equivalent to thirty (30) days of salary for the first year of service and twenty (20) days of salary for each additional year of service and proportionally for fractions of the year.

For employees who earn ten (10) minimum legal monthly salaries or more, the indemnity is equivalent to twenty (20) days of salary for the first year of service and fifteen (15) days of salary for each additional year of service and proportionally for fractions of the year.

For employees who have had ten (10) or more years of service as of December 31, 1990, and are entitled to reinstatement action, the indemnity is equivalent to forty-five (45) days of salary for the first year of service and thirty (30) days of salary for each additional year subsequent to the first and proportionally for fractions of the year.

For employees who have had more than ten (10) years of service as of December 27, 2002, the indemnity is equivalent to forty-five (45) days of salary for the first year of service and 40 additional days of salary for each year subsequent to the first and proportionally for fractions of the year.

For contracts covering a fixed term or the duration of a specific job, the indemnity is equivalent to the salaries corresponding to the remaining period of the contract, but for contracts covering the duration of a specific job, the indemnity may not be less than 15 days of salary.

Employers must pay employees all outstanding mandatory amounts due to the employee immediately upon termination, which vary according to the kind of salary agreed upon by the parties. Upon termination of employment, employees with ordinary salary are entitled to the following minimum legal benefits: pending salaries, severance aid, interests on severance, semester bonus and unused vacations. Employees under the fashion of integral salary are entitled only to pending salaries and vacations.[10]

Please be aware that in the event of termination of the labor contract for any reason, the employer must deliver to the employee a written record of payment vouchers for social security quotations and payroll taxes which the employer performed in the employees' behalf during the last three (3) months of the labor contract. As the vouchers for the last month of services arrive one month late, the employer must send these to the former employee's domicile through a certified courier.

10 Please bear in mind that, depending on the employee's case, additional payments may rise upon the termination of employment, including: (a) extralegal benefits owed; (b) indemnity for dismissal, if employment is terminated without just cause, and a settlement bonus and additional extralegal benefits in case of termination by mutual consent; (c) pension quotations plus moratorium interests and health expenses, if the employee was never affiliated with the integral social security system; and (d) additional indemnity, in case of employees with ordinary salary if the severance aid was not deposited in a severance fund on the dates required by law.

6. Territoriality Principle

Pursuant to Article 2 of the Colombian Labor Code, Colombian labor law governs the labor relationships of all employees who render services within the Colombian territory. Therefore, regardless of the place of execution of the hiring contract, the employee's nationality, and of the fact that the employer is a foreign entity, Colombian labor law applies and regulates the labor relationship of every employee working in our country.

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

Colombian employers are obligated to pay their national and foreign employees salaries and a number of mandatory social benefits (as previously mentioned), which vary according to the kind of agreed salary. The salary and social benefits are certain and indisputable rights of the employees and therefore they cannot be waived. Additionally, such rights are mandated in public policy provisions that shall be deemed incorporated in any employment agreement. Employer's omission of paying salary and social benefits can generate considerable economic penalties upon a judicial claim.

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 with social security entities, the family compensation bureau and the severance 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.

7. Foreign Employees in Colombia

Pursuant to our labor laws,[11] there is a labor contract, 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.[12] 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 person goes every day to the same place, on a certain schedule, to render services; the person has an office that is owned or paid for by the contractor of the services; the person obtains reimbursement from the contractor 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 or her condition as "employee" within the organization of the local company.

In the specific case of foreign employees (expatriates) who are transferred to work in Colombia in their condition as employees of a foreign entity, our 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 contract 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.

Furthermore, considering the amount of salary to which – under normal circumstances – foreign employees are entitled, the administrative work they handle, and the non-salary benefits they ordinarily receive, we believe that the

11 Article 23 of the Colombian Labor Code, as modified by Article 1 of Law 50 of 1990.

12 Please note that when a labor judge studies the presence of subordination, facts have priority over any document or agreement signed between the parties detracting the labor relation.

Colombian entity, if such is the case, should agree to a remuneration for these employees under the fashion of integral salary and comply with the benefits of payment of vacations and affiliation with the social security system.

It is important to point out that, as an exception, foreign employees working in Colombia on a temporary basis may request not to be affiliated with the general pension system, provided that the following circumstances are met: (i) the foreign employee expressly requests not to be affiliated with the general pension system in Colombia; (ii) the foreigner employee remains in the country because of his or her labor contract which was entered into on a temporary basis (less than one year); and (iii) the foreign employee is covered by a similar pension plan abroad. This exception does not cover affiliation with the general health system and the professional risks system.

8. Collective Labor Relationships and Unions

8.1 The Unions

Under Colombian collective law, unions may be that of a base or company, an industry, or a guild or of varied occupations, the company union being the most common and formed by persons of different professions, jobs or specialties rendering services to the same company or institution.

The 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 politics. 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. The tendency has been to reduce affiliations due to a series of factors, including the high rates of unemployment in Colombia and recent labor reforms liberalizing the terms and conditions of employment.

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 (6) additional months. Under such union privilege, these employees cannot be dismissed, diminished in their labor conditions or transferred to other municipalities or establishments of the company without a just cause previously qualified by the labor judge. Upon integration, purchases or other business transactions involving termination of employment of unionized employees, it is important to be aware of this union privilege, as it limits the employer faculty to terminate the employment agreement. It is pertinent to point out, however, that when employees with union privilege are terminated by mutual consent, the said privilege is not applicable.

Colombian labor law provides a special labor proceeding, through which employers request authorization from the labor judge to terminate the employment agreement of these protected employees with just cause. If an employee with union privilege is dismissed without authorization from the labor authority, termination of employment has no 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 unemployment.

Traditionally, Colombian regulations prohibited multiple affiliations with unions of the same classification or activity. Per ruling C-797 dated June 29, 2000, the Constitutional Court declared that the provisions containing such limitations were unconstitutional, as they threatened the union association right of employees.

Decree 2351 of 1965, by means of which the Colombian Labor Code was amended, prohibited the coexistence of more than one base union within the same company. However, such prohibition was also declared unconstitutional by decision C-567 dated May 17, 2000. In this case, the Constitutional Court considered that the employee's right to constitute union organizations as well as their effective enjoyment of union freedom was being limited.

Thus, 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. From the employer's perspective, such situation, in practice, may represent an increase in union privileges. However, in the long term, union organizations may weaken as they proliferate.

8.2 Collective Bargaining Agreement

Unions are authorized by law to enter into collective bargains on behalf of the employees affiliated with the union.[13] No more than one collective bargaining may exist in each company.[14] In addition to the provisions agreed upon between the parties, the collective bargaining agreement must indicate the enterprise or establishment, industry and trades covered thereby, the place or places where it is to govern, the date on which it takes effect, its duration, the causes and methods of its renewal and termination, and the responsibility for nonperformance.[15]

The collective bargaining agreement must be in writing and produced in as many copies as the number of the parties, plus one, to be deposited with the Ministry of Social Protection. The bargaining agreement shall be invalid until these formalities are complied with.[16]

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.[17] When one of the parties to the bargaining is a union whose members exceed one-third of the total number of workers of the given enterprise, the provisions of the bargaining extend to all workers of the enterprise, whether unionized or not.[18]

Within sixty (60) days prior to the date of expiration of the collective labor convention, 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 convention).

With such denunciation, the collective conflict commences with three representatives appointed by the union and by the employer company that shall enter into discussions within the five (5) days following the presentation of the petition

13 Colombian Labor Code, Article 3.
14 Colombian Labor Code, Article 467.
15 Colombian Labor Code, Article 468.
16 Colombian Labor Code, Article 469.
17 Decree 2351/65, Article 37.
18 Decree 2351/65, Article 38.

sheet. This negotiation stage is called "direct agreement" and its duration is twenty (20) calendar days, which may be extended upon mutual consent of the parties up to another twenty (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 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). In these cases, the protected employees cannot be dismissed without just cause during the period of presentation of the petition sheet until the termination of the collective conflict.

9. Strikes

Article 56 of the Colombian Constitution recognizes the right to strike as fundamental. Employers are not permitted to use strike-breakers.[19]

Only in cases expressly excluded by law will a strike be deemed illegal[20] (possibly resulting in the dismissal of union officers), including the following:

a. When incurred in essential public service entities.

b. When it pursues purposes other than professional or economic ones.

c. When the stages to legally vote for a strike have not been complied with.

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.

19 Colombian Constitution, Article 56.

20 Article 450, Labor Code, modified by Law 50 of 1990, Article 65.

Pursuant to Article 429 of the Colombian Labor Code, a strike is a collective, temporary and pacific suspension of work, 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 ten (10) days 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 two (2) to ten (10) days from the date of the resolution authorizing a strike.

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

10. Company Regulations and other Obligations of the Employer

Employers that employ more than five (5) permanent workers in a commercial establishment or more than ten (10) in an industrial establishment must have written internal work regulations approved by the Ministry of Social Protection. In general terms, those regulations specify the obligations, prohibitions and labor conditions to which the employer and the employees are subject in the development of their labor relationships.

According to Law 1010 of 2006, internal work regulations must include a special chapter on the prevention and handling of labor harassment cases within the organization.

Employers that employ ten (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.

Work regulations must be made public to all employees within 15 business days following notification by the Ministry of Social Protection of the approval of the regulations.

The employer must publish both work and hygiene regulations by posting two copies thereof in two different visible workplaces.

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

Employers must keep a book which records 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 fifteen (15) permanent workers must promote the training and education of workers in certain technical tasks, jointly with the government entity called "Servicio Nacional de Aprendizaje ('Sena')," through the hiring of one apprentice per group of 20 employees (apprentice quota). Once the apprentices are hired, employers must comply with special provisions related to the apprenticeship contract.

For employees who earn less than two (2) minimum legal monthly salaries, the employer must pay a monthly transportation allowance (for 2008, Col. Pesos $55.000) and provide an endowment of one pair of shoes and one labor dress that has to be provided three (3) times a year in accordance with the task to be performed.

Payroll taxes (contributions to the family subsidy bureau, Sena and the Colombian Family Welfare Institute) are required to be paid by employers subject to Colombian labor laws. Said taxes, in the aggregate, amount to 9% of the employer's monthly payroll.

From a tax standpoint, bear in mind that labor payments are those derived from or relating to a labor relationship and, as a general rule, are subject to taxes except as otherwise specifically provided.

Labor payments not subject to specific tax treatments[21] are exempt from 25% income tax, limited to a maximum of Col. Pesos $5.293.000 per month for the year 2008. To make this taxation effective, employers are obliged to perform income tax withholdings through two procedures. Moreover, withholding rates vary according to the employee's income level, ranging from (for year 2008) 0% for individuals earning up to Col. Pesos $2.095.130, to 19% for individuals earning more than Col. Pesos $2.095.130 up to Col. Pesos $3.308.100, and 28% for individuals earning more than Col. Pesos $3.308.100 up to Col. Pesos $7.939.440. Income in excess of Col. Pesos $7.939.440 is subject to an income tax rate of 33%.

The employer must give the employee that requests it, upon termination, a certification showing the period of service, nature of work, and wages earned and, similarly, upon the employee's request, a medical examination and a certification with respect thereto, if upon admission or during the course of the employment the employee was subjected to a medical examination.[22]

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.

21 Such as certain indemnifications and pensions, among other payments.

22 Labor Code, Article 57, Section 7.

Mexico

1. Introduction

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

The FLL contemplates two general types of employment relationships: individual and collective. An individual employment relationship is created automatically upon a person being hired to perform a task in a subordinated position (subject to the control of the employer), whether on a temporary basis or for an indefinite duration. Collective employment relationships are established when the employees are organized by a certified labor union and such union represents the employees before the employer.

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

2. Mandatory Employee Benefits

The FLL mandates a series of minimum benefits that must be provided by the employer to its employees as of the time of the establishment of the employment relationship, both for individual as well as 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 from time to time 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 FLL as professional categories for whom a specific professional minimum wage applies. The current general minimum wage in Mexican Pesos (non-professional) for the three regions effective January 1, 2008 is as follows:

Zone A (includes Mexico City):	Pesos $52.59 per day
Zone B (includes Guadalajara and Monterrey):	Pesos $50.96 per day
Zone C:	Pesos $49.50 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 for the day shift, 45 for the mixed shift and 42 for the night shift. The normal hours may be distributed throughout the week as necessary. The employer must pay for the first nine hours of overtime work at 200%, and overtime work exceeding nine hours at 300% of standard pay. An employer must not require its employees to work overtime for more than nine hours per week. At least one paid full day of rest per week must be observed. Sunday work is subject to a 25% premium, independent of any overtime premium that may apply.

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% 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 paid legal holidays which must be observed[23]. Employees required to work on any of these holidays must be paid at the rate of at least three times their normal wage:

- January 1 (New Year's Day)
- First Monday of each month of February (Constitution Day)
- March 21 (only in 2006)
- Third Monday of each month of March effective as of 2007 (Benito Juarez Day)
- May 1 (Labor Day)
- September 16 (Independence Day)
- Third Monday of each month of November (Revolution Day)
- December 1, every 6 years, upon inauguration of a new President
- December 25 (Christmas)
- Those days determined by the 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 December 20 of every year.

2.6 Profit Sharing

An employer must distribute to its employees an amount equal to ten percent (10%) of its pre tax profit, within 60 days after it is required to file its year end income tax return. Fifty percent (50%) 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.

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23 Article 74 FLL has been amended as of January 18, 2006, modifying the mandatory days of rest that correspond to the Constitution Day, Benito Juarez and the Revolution Day, as indicated in this document.

2.7 Training

All employers are obligated by law to train their employees. The employer must have a training program registered and approved by the Ministry of Labor. The program must be implemented by a Mixed Commission for Training and Development comprising an equal number of representatives of the employees and of the employer.

2.8 Health and Safety

The employer is obligated to provide its workers with a safe and sanitary environment. A Mixed Commission for Health and Safety must be created to investigate the causes of illness and accidents (if there are any) and to propose means to avoid them.

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 thereunder 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 IV below.)

2.10 Social Security

See Section IV below.

2.11 Worker's Housing Fund

See Section V below.

2.12 Retirement Insurance

Effective May 1, 1992, the Social Security Law was amended to introduce a retirement savings component to the social security system. All employers were required to make a contribution to the Retirement Savings System ("Sistema de

Ahorro para el Retiro" or "SAR") equivalent to two percent of the employee's gross wages. As a result of changes to the Social Security Law that came into effect on July 1, 1997, the Retirement Savings System was changed to retirement insurance ("seguro de retiro"). The amount of the contribution is the same but the funds are now held in individual retirement savings accounts in the name of the employee at specific financial institutions established to manage retirement savings, known in Spanish as *Afores*.

3. Voluntary Employee 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 January 31, 1942, has undergone a series of amendments.[24] In accordance with the SSL, last modified on December 20, 2001, all employers must register their employees with 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 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.

24 On December 1995, the Mexican Congress approved a New Social Security Law which came into effect on January 1, 1997. On December 20, 2001, the Mexican Congress approved a reform which brought major changes to the current Mexican social security system.

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

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	0
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 greater 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

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 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; and

(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 April 24, 1972, established the National Worker Housing Fund Institute ("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 of the INFONAVIT, the agency became the builder of low income housing for workers, which it then 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 granted loans on a selective basis, with preference given to individuals sponsored by groups such as unions or employer associations. Certain intrinsic deficiencies of the system led to the need for a complete restructuring of INFONAVIT and the rules under which it operated.

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 service 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; and

(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 can not 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/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.

7. Termination of Employment and Severance Payments

7.1 Overview

Once an employment relationship in 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 thus, 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

(ii) 20 days' wages 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) Back wages from the date of the dismissal until the date of 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, which prevents him from fulfilling the employment contract.

(xii) There is reasonable cause for loss of confidence.

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

7.4 Employee Just Cause for Rescinding

An employee may rescind and be entitled to severance pay if his/her employer commits specific acts against him/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/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.

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 can not 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.

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 in regard to the Mexican political landscape. Unions have become a very strong force within the official political party (PRI) 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 maintain 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; and

(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.

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 above-mentioned.

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.

Venezuela

1. Introduction

The Venezuelan Organic Labor Law ("OLL") regulates employment relationships in Venezuela. According to Article 10 of the OLL, the 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 except for those whose context reveals the legislative intent not to give them imperative nature. The OLL contains detailed provisions concerning the minimum employment conditions and rights that the employer must offer and pay its employees.

The OLL 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 either unions or coalitions, 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 OLL, 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 OLL provides for a set of minimum benefits that in general must be provided by the employer to its employees. Such minimum benefits are:

2.1 Minimum Wage

Venezuela has minimum wages periodically adjusted by the government. The minimum wages in effect in Venezuela as of May 1st, 2008 (subject to confirmation from the National Assembly, which is very likely to be obtained) are as follows:

Urban and rural workers, as well as domestic employees and janitors	Bs.F. 799.23 per month, or Bs.F. 26.64 per day
Adolescents and apprentices	Bs.F. 599.43 per month, or Bs.F. 19.98 per day

The foregoing minimum wages must be paid to the employee in cash. These minimum wages must be determined on a yearly basis by the National Executive through the Ministry of Labor, after hearing the recommendations from a National Tripartite Commission composed by employers' representatives, labor union representatives and representatives of the National Executive. However, the National Executive has the power to enact minimum wages by Decree whenever the cost of living increases disproportionately, after hearing the employer and labor sectors, the National Economy Council and the Central Bank of Venezuela.

2.2 Maximum Hours/Overtime Pay

The maximum number of hours which in general an employer may require its employees to work without having to pay overtime, is eight (8) hours per day and forty-four (44) hours per week for the day shift, seven and a half (7½) hours per day and forty-two (42) hours per week for the mixed shift, and seven (7) hours per day and thirty-five (35) hours per week for the night shift. There are several exceptions to these restrictions. The workday of the day shift may be extended for up to nine (9) hours without overtime pay and without exceeding the weekly limit of forty-four (44) hours, in order to provide for two complete days of rest per week. Overtime must be compensated with a surcharge of at least fifty percent (50%) over the normal salary value of the hour for the corresponding ordinary shift. An employer may not require its employees to work more than ten (10) hours per week or more than one hundred (100) hours per year of overtime. In principle, the total hours of work per day, including overtime, cannot exceed ten (10) hours.

2.3 Vacation Days and Vacation Bonus

The OLL provides that employees are entitled to enjoy fifteen (15) working days of paid vacations upon completion of one continuous year of service, plus one (1) additional working day for each subsequent continuous year of service, up to a maximum total of thirty (30) working days per year.

Likewise, employees are entitled to receive, on vacation, a vacation bonus equivalent to seven (7) days of salary, plus one (1) additional day for each subsequent continuous year of service, starting on the second year, up to a maximum total of twenty-one (21) days of 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

At least one mandatory weekly rest day must be paid, which in principle must be Sunday. However, in certain activities that cannot be stopped for public interest, or technical or eventual reasons, the mandatory weekly day of rest may be changed to another day of the week.

The following dates are holidays under the OLL: Sundays, January 1st, Maundy Thursday and Good Friday, May 1st, and December 25th; the dates listed in the Law of National Holidays, including April 19th, June 24th, July 5th, July 24th, and October 12th; and those days declared holidays by either the National Government or the State or Municipal authorities, up to a maximum of three (3) days per year.

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

Weekly rest days and holidays are compensated with the payment of one day of normal salary. When the monthly salary is based on the time devoted to the work, the payment for holidays and the required weekly rest day is already included in the salary. When an employee works on his mandatory weekly rest day, he is entitled to be paid for the work rendered that day with a fifty percent (50%) surcharge. The OLL also provides that if the work on a mandatory weekly rest day is for four (4) 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 (4) hours, the employee will receive a 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 with the fifty percent (50%) surcharge described above.

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 fifteen (15) days of salary and not more than: (i) two (2) months' salary, if the employer has less than fifty (50) employees or a capital stock not exceeding Bs.F. 1,000; or (ii) four (4) months' salary, if the employer has fifty (50) or more employees and a capital stock exceeding Bs.F. 1,000. In any event, and within the limits mentioned, the employer must distribute fifteen percent (15%) 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 (2) 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 fifteen (15) 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 Payment

The seniority payment is equivalent to five (5) days of salary for each full month of service starting from the fourth month of service included, i.e., forty-five (45) days of salary for the first full year of service, and sixty (60) days of salary for each additional year. Employees with seniority of more than six (6) months as of the date on which the current OLL established this payment (June 19, 1997), have the right to a seniority payment equivalent to sixty (60) days' salary during the first year of service after June 19, 1997. In addition, starting with the employee's second year of service, the employer must pay two (2) additional and cumulative days of salary for each subsequent year (or fraction of a year greater than six [6] months) of service, up to a maximum of thirty (30) additional and cumulative days per year.

The seniority payment is credited or deposited monthly (as indicated below) and is calculated based upon the salary earned by the employee in the corresponding month, including the participation in the employer's profits or profit sharing.

The employee may elect whether the seniority payment is to be deposited in an individual trust or to be credited on the employer's books. The monthly amounts deposited or credited must be paid upon termination of employment, irrespective of its cause. If the benefit is credited on the employer's books, the same is to earn interest at the lending rate determined by the Central Bank of Venezuela. If it is deposited in a trust, the same is to earn returns based on the investments made by the trustee. Interest accrued on the seniority payment and the annual component of this benefit (the two [2] additional and cumulative days of salary starting from the second year of service) should be paid to the employee every year of service unless the employee elects to capitalize them.

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

When the employment relationship ends, the employee has the right to be paid the seniority payment that has been credited on the books of the employer or has been deposited in his/her name in that specific year employment ends, in the following manner: (i) if termination occurs when the employee has seniority of more than three (3) months and up to six (6) months, the employer must pay the difference not yet credited or deposited, to cover the equivalent of fifteen (15) days of salary; (ii) if termination occurs when the employee has more than six (6) months' seniority and up to one (1) year of seniority, the employer must pay the difference not yet credited or deposited, to cover the equivalent of forty-five (45) days of salary; and (iii) if termination occurs when the employee has seniority of more than one (1) year, the employer must pay the difference not yet credited or deposited, to cover the equivalent of sixty (60) days of salary for that year, provided that the employee worked for at least six (6) months during that year.

2.7 Integral Care for the Employee's Children

Employers with more than twenty (20) employees are required to provide day-care or initial education services for their employees' children up to five (5) years of

age. The employees subject to this benefit are those who earn a monthly salary equivalent to or lower than five (5) minimum monthly wages. To comply with this requirement, employers may choose to (i) provide a child-care or initial education center for its employees' children, (ii) establish a joint child-care or initial education center with one (1) or more employers operating in the same area, or (iii) pay the cost of an approved child-care or initial education center with a maximum tuition and monthly fee equivalent to forty percent (40%) of the minimum wage. In practice, most companies choose the latter option. Payments are made directly to the institution providing the service care and for legal purposes are not deemed part of the employee's wages.

2.8 Worker's Food Law

The Worker's Food Law obligates employers having twenty (20) or more employees 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, 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 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.

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) help in the organization and registration of the

Occupational Health and Safety Committee. There are many other obligations that 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 (the "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 five percent (5%) 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 (6) weeks prior to giving birth and twelve (12) weeks thereafter. In the event that the 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. If the female employee adopts a child under three (3) years of age, she is entitled to a maternity leave of ten (10) weeks. The OLL 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 her accrued vacation time immediately after maternity leave, the employer must allow it.

Likewise, during the nine (9) months following childbirth, the woman employee is entitled to two (2) paid licenses per day of half an hour each to feed her baby. These licenses are increased to one (1) hour each and extended over a period of twelve (12) months following childbirth where the employer does not maintain a childcare facility or an initial education service, and in certain special cases provided for in the corresponding regulations (e.g.: multiple deliveries).

The Regulations to the LOPCYMAT provide: (i) the right of either the mother or the father to enjoy one (1) 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 (1) day or two (2) 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 father of a child (or the male employee who adopts a child under three [3] years of age) is entitled to a paternity leave of fourteen (14) days, which is extended for another fourteen (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 twenty-one (21) days; and (iii) in case the child's mother dies, paternity leave could be up to twelve (12) weeks. These licenses should be paid by the social security system. Finally, whenever the employee wishes to take his accrued vacation time immediately after paternity leave, the employer must allow it.

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 (the "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 non-compliance.

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") within three (3) working days of commencing activities. Employers must also register all their employees with the IVSS within three (3) 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 (5) urban minimum monthly salaries. For pensions and health-related benefits, the employee pays four percent (4%), and, while the legislation has contradictions, the IVSS has been requiring employers to contribute between nine percent (9%) and eleven percent (11%), 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

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 two percent (2%) of the total amount of wages, salaries, and remunerations paid to employees in industrial or commercial establishments, which contribution is required for companies with five (5) or more employees; and (ii) an employee contribution of half a percent (0.5%) of the profit sharing received by employees, which amount must be withheld by the employer from the profit-sharing benefits paid to its employees.

The law also imposes the obligation on certain commercial and industrial companies to employ and train apprentices between fourteen (14) and eighteen (18) years of age.

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 ten (10) urban minimum monthly salaries. Employers must contribute an amount equal to two percent (2.0%) and employees must contribute half a percent (0.5%). The employee's contribution must be withheld by the employer from the normal salary paid to the employee. In practice, the IVSS has been collecting this contribution applying the same five (5) minimum wage ceiling pertaining to all other contributions to the IVSS.

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 two percent (2%) of the employee's total monthly income, and is required to withhold and pay an amount equal to one percent (1%) of the employee's total monthly income. In our opinion, these contributions should be calculated on the basis of the employee's normal salary and should be limited to a maximum taxable base of ten (10) urban minimum monthly salaries. However, the National Housing and Habitat Bank (BANAVIH), which is the governmental agency in charge of administering this payment system, has construed the legislation in the opposite manner, attempting to collect these contributions on the basis of all income earned by the employee every month, 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 a percent (0.75%) to ten percent (10%) 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 ten (10) urban minimum monthly salaries.

5. Types of Labor Contracts

5.1. Overview

According to the OLL, an individual employment contract is one by which a person obligates himself/herself to provide services to another under the latter's dependency and for a remuneration. While it is not necessary 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. Among the items that should be covered in the contract are the following:

(i) Name, nationality, age, marital status, and domicile or residence of the employee and the employer;

(ii) Duration of the agreement or an indication that it is for an indefinite term;

(iii) Description of service or services to be rendered;

(iv) The work to be performed if the contract is for a specific work;

(v) Work day and work week when it has been agreed upon for time or task;

(vi) The salary or the manner to calculate it, as well as its place and form of payment;

(vii) The place where the services will be provided; and

(viii) Any other legal terms and conditions agreed upon by the parties.

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 as one with an indefinite term. The different types of individual employment agreements generally provided for in the OLL 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. In principle, if the employee has job stability, this type of contract may be terminated only for a justified cause, as provided for in the OLL. However, the employer may also terminate it for no cause, in which case the employer will be required to pay the indemnity for unjustified dismissal and the indemnity in lieu of advanced notice of termination, both provided in Article 125 of the OLL. If the employee does not have job stability, the unjustified dismissal will require the advance notice of termination provided for in the OLL.

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 the 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 OLL. These cases are: (i) when the nature of the services is temporary, (ii) when a Venezuelan is hired to perform services outside of Venezuela, and (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). 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 lapse of the term, respectively.

6.2 Dismissal with Cause

The dismissal of an employee will only be deemed as one for cause when it is based on any of the following causes set forth in Article 102 of the OLL:

(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 (3) business days of unjustified absence from work in one (1) 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; and

(x) Abandonment of work (as defined in the OLL).

The Regulations to the OLL 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 (4) times in one month.

The employer has a term of thirty (30) consecutive days in which to dismiss the employee from the time it learned or should have learned of the employee's 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 (5) 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 103 of the OLL:

(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) Omissions or imprudent acts that seriously affect the safety or hygiene of work;

(vi) Any act that is a serious breach of the obligations imposed by the employment relationship; and

(vii) Any act that constitutes a constructive dismissal.

According to the OLL, 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 or professional capacity; or that the worker render his services under conditions that imply a change of residence when this was not agreed upon in the contract, except 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; and

(v) Other similar events that alter the existing work conditions.

To 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 ninety (90) days;

(ii) Return of the employee to his primary position after having performed, on a temporary basis and for a term not exceeding one hundred and eighty (180) days, a higher position due to absence of the person holding such position; and

(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 ninety (90) days.

Any worker who decides to resign for cause may do so within a term of thirty (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 OLL for the cases of unjustified dismissal.

6.4. Dismissal for no cause

Permanent employees who have been employed for more than three (3) months and who are not upper management employees enjoy job stability. The unjustified dismissal of such workers is possible, but in such cases the employer must pay them an indemnity for unjustified dismissal and an indemnity in lieu of advanced notice of termination, both provided in Article 125 of the OLL and which are described below, in addition to the regular labor and severance benefits due the employees:

1. Indemnity for Unjustified Dismissal

The indemnity for unjustified dismissal is equivalent to:

(i) ten (10) days' salary if the term of service is more than three (3) months but not more than six (6) months; or

(ii) thirty (30) days' salary per each year of service or fraction of a year greater than six (6) months, up to a maximum of one hundred fifty (150) days' salary.

This indemnity is paid on the basis of the salary earned by the worker at the time of termination of the employment relationship.

Indemnity in Lieu of Advanced Notice of Termination

2. The indemnity in lieu of advanced notice of termination is equivalent to:

(i) fifteen (15) days' salary if the term of service is more than one (1) month and up to six (6) months;

(ii) thirty (30) days' salary if the term of service is more than six (6) months but less than one (1) year;

(iii) forty-five (45) days' salary if the term of service is equal to or greater than one (1) year but less than two (2) years;

(iv) sixty (60) days' salary if the term of service is equal to or greater than two (2) years, but not more than ten (10) years; or

(v) ninety (90) days' salary if the term of service is more than ten (10) years.

This indemnity is paid on the basis of the salary earned by the worker at the time of termination of the employment relationship; for this purpose, however, such salary cannot exceed the equivalent of ten (10) minimum monthly salaries.

6.5 Restrictions on Dismissals

1. Mass Dismissal

The OLL forbids mass dismissals. According to Article 34 of the OLL, a dismissal is deemed a mass dismissal when it affects ten percent (10%) or more of the workers in a company with more than one hundred (100) workers, twenty percent (20%) or more of those in a company with fifty (50) to one hundred (100) workers, or ten (10) or more workers in a company with less than fifty (50) workers, within a term of three (3) months, or a longer period if, in the opinion of the Labor Ministry, the circumstances are critical. The Labor Ministry can suspend mass dismissals and order the reinstatement of dismissed workers with the payment of their back salaries. If there are economic or technological reasons forcing an employer to reduce its personnel, the employer could negotiate such a reduction with the workers' union, in the presence of the Labor Inspector.

2. Bar Against Dismissal

There are certain cases when workers cannot be dismissed, not even by paying them additional compensation, unless their dismissal has been previously authorized by the Labor Inspector through a special procedure established for this purpose, in which the employer must prove the worker's fault or breach. Workers who enjoy this special protection or "bar against dismissal" are, among others, the following:

(i) Workers who are promoting the legalization of a workers' union;

(ii) 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, while the same is being discussed and for a maximum of two hundred seventy (270) days;

(v) All workers interested in a collective labor conflict, while the same is active;

(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 a sickness or accident, among others;

(viii) Pregnant women; and

(ix) Male and female workers for one (1) year after becoming parents or adopting a child of less than three (3) years of age.

There is also a special bar against dismissal implemented through a Decree issued by the National Executive. This special protection was originally enforced during the second quarter of 2002, and has been continuously extended since. With respect to the private sector, it currently protects all employees except for: (i) employees of trust ("trabajadores de confianza"); upper management employees ("empleados de dirección"); (ii) those who have less than three (3) months of service; (iii) temporary, eventual, and occasional employees; and (iv) those employees whose monthly base salary, by the date of the Decree providing for this protection, was higher than the equivalent of three (3) minimum monthly wages. The special bar against dismissal is set to be valid, unless further extended, until December 31, 2008.

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 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 (the "INPSASEL").

7. Collective Labor Relations and Unions

7.1 Overview

The OLL 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.

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; and

(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.

The OLL grants rights to both coalitions of workers, which are temporary associations of workers for the defense of mutual rights and interests, and unions, which are permanent associations of at least a minimum number of workers (which varies according to the type of union) for the study, furtherance, and defense of mutual rights and interests. Unions require registration with the competent branch of the Ministry of Labor.

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 OLL, a CBA may not be agreed upon for more than three (3) years or for less than two (2) years. After it has expired, its economic, social and union provisions 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.

If economic circumstances place the company's activities or existence in danger, the OLL allows the employer to negotiate with the workers' union on the temporary suspension of the application of certain provisions of the CBA. During the suspension, the affected workers cannot be dismissed. The suspension may not extend beyond the term of the CBA.

CBAs may be negotiated for a specific company or group of companies, or for the majority or all of the companies in a given industry or activity.

8. Strikes

8.1 Overview

The OLL 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 employer to take, modify, or desist from taking measures concerning the terms and conditions in which the services are provided; (ii) to enter into a CBA with the employer; (iii) to require compliance by the employer with an existing CBA; 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. By exception, 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 caused by the employer. 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/her from the Ministry of Labor, for which a petition must be filed within the thirty (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: (i) file a collective grievance with the competent branch of the Ministry of Labor, in compliance with all formalities required by the OLL and its Regulations; (ii) represent the majority of the workers involved in the conflict; and (iii) exhaust the conciliatory grievance procedure agreed upon in the existing CBA or collective accord. In any event, the strike cannot lawfully begin before at least one hundred twenty (120) hours have elapsed after the moment in which the collective grievance was filed.

Even during the strike, certain employees are still required to work, such as, for example, those whose services are necessary for the health of the population or 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 hygiene and safety of the workplace and the source of work. In addition, workers providing services in a ship may not strike during navigation. Similarly, workers providing services in aircrafts 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 circumstance, it places the life or security of the population or a portion thereof in imminent danger, the National Executive may provide for the recommencement of the work and submit the matter to arbitration by a motivated Decree.

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