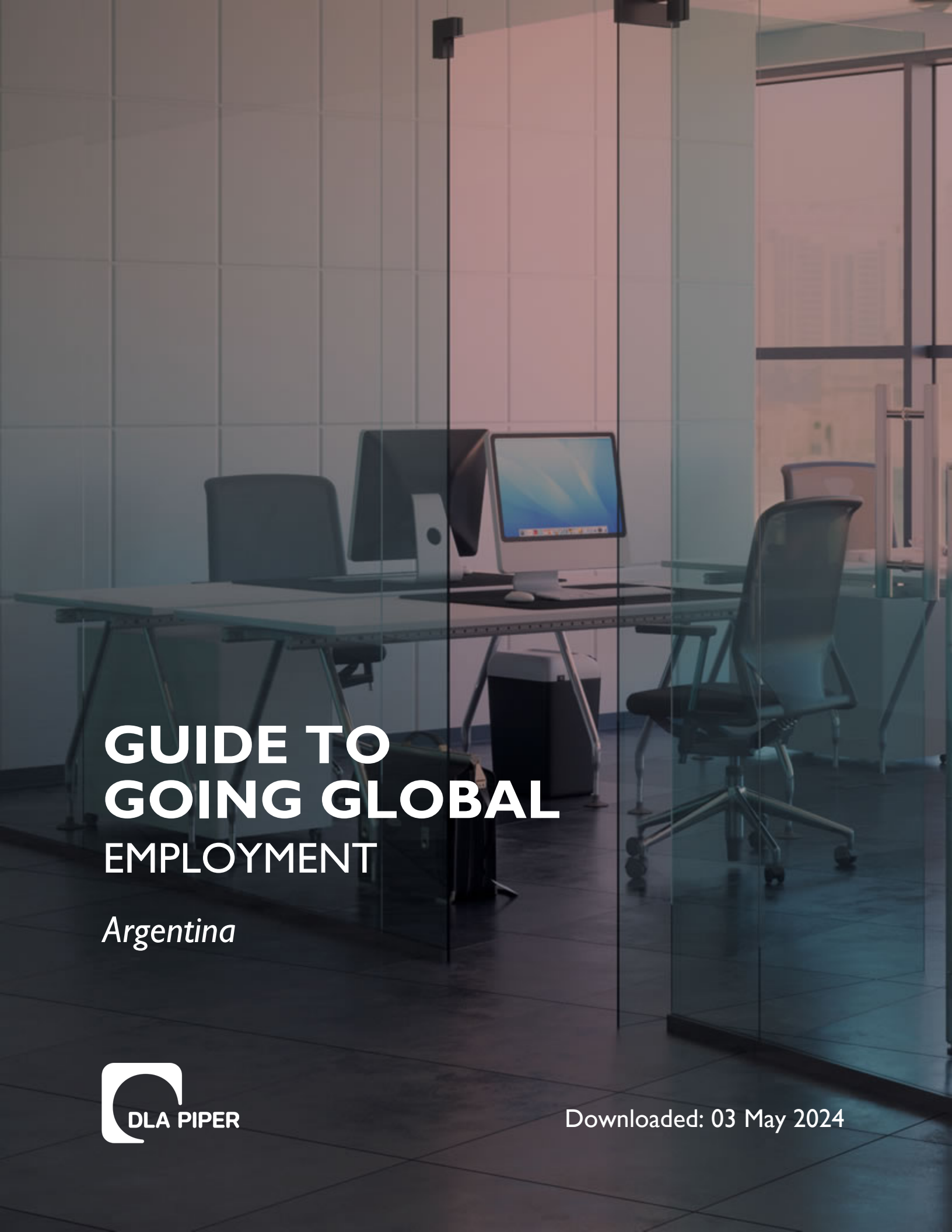

GUIDE TO GOING GLOBAL

EMPLOYMENT

Argentina

DLA PIPER

INTRODUCTION

Welcome to the 2023 edition of DLA Piper's *Guide to Going Global – Employment*.

GUIDE TO GOING GLOBAL SERIES

Many companies today aim to scale their businesses globally and into multiple countries simultaneously. In order to help clients meet this challenge, we have created a handy set of global guides that cover the basics that companies need to know. The *Guide to Going Global* series reviews business-relevant corporate, employment, equity compensation, intellectual property and technology, and tax laws in key jurisdictions around the world.

EMPLOYMENT

As business grows more global, the challenge for in-house counsel and HR professionals responsible for workforce issues and employment law compliance is intensifying. This guide is designed to meet that challenge head on and has been produced in response to feedback from clients in both established and emerging international businesses. We hope it will become an invaluable resource for you.

This 2021 edition of our popular guide covers all of the employment and labor law basics in 63 key jurisdictions across the Americas, Asia Pacific, Europe, the Middle East and Africa. From corporate presence and payroll set-up requirements, language rules, minimum employment rights, business transfer rules, through to termination and post-termination restraints, we cover the whole employment life span.

We have used our global experience and local knowledge to bring you this newest edition of our guide. With over 300 lawyers, DLA Piper's global Employment group is one of the largest in the world, with one of the widest geographical footprints of any global law firm. We partner with our clients, wherever they do business, to find solutions and manage risk in relation to their legal challenges and objectives.

While this guide provides high-level guidance, it is not a substitute for legal advice, and we encourage you to take advice in relation to specific matters. If you wish to speak to any of our contributors, their contact details are set out towards the back.

We hope that you find this guide valuable and we welcome your feedback.

To learn more about DLA Piper's global Employment practice, visit www.dlapiper.com or contact:

Brian Kaplan
Co-Chair, Global Employment practice
brian.kaplan@dlapiper.com

Ute Krudewagen
Co-chair, International Employment practice
ute.krudewagen@dlapiper.com

Pilar Menor
Co-Chair, Global Employment practice
pilar.menor@dlapiper.com

ARGENTINA

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LEGAL SYSTEM, CURRENCY, LANGUAGE

Constitutional and civil law with certain application of case law. The official currency is the Argentine Peso (ARS). The official language is Spanish.

CORPORATE PRESENCE REQUIREMENTS & PAYROLL SET-UP

In order to set up a branch in Argentina, foreign companies must file certain documents before the local public registry of companies (eg, bylaws and amendments, a certificate of good standing and a true and correct copy of a resolution of its board – or equivalent body – deciding to establish a branch in Argentina and appointing a legal representative in Argentina who must be an Argentine resident). Once the registration of the branch is approved by the public registry, the branch must request a tax ID from tax authorities (CUIT). Once the branch has obtained its CUIT, the branch is entitled to hire employees.

A foreign entity cannot hire employees in Argentina without a local corporate presence.

Employers must pay social security contributions (ie, 23 percent or 27 percent on top of salaries, depending on the company's activity and revenue). Employees must contribute 17 percent of their salaries to the social security system, to be withheld by the employer and subject to certain taxable limits. Income tax is also withheld by the employer when paying employees' salaries (maximum rate 35 percent, subject to a progressive scale).

Collective bargaining agreements (CBAs) for certain activities provide payments to be made by the employer and /or the unionized employees to the relevant unions.

PRE-HIRE CHECKS

Required

- Pre-hire medical checks are required pursuant to resolutions issued by the Occupational Risk Superintendence. If an employee does not complete a pre-hire medical check, the employee will be deemed to have begun work in optimal health; therefore, any injuries or diseases that may arise in the future will be deemed to have happened during the employment relationship.

- Criminal record checks are required for foreign employees to obtain a work visa.

Permissible

Where criminal checks are not required for work visa purposes, they are only permissible – and are common in practice – for specific roles (eg, high-level managerial positions). Reference and educational checks are common and permissible, provided applicant consent was previously obtained.

IMMIGRATION

An individual from a non-Mercosur country must obtain a temporary residence permit that permits them to enter and work in Argentina. Temporary residency is granted for a maximum period of up to 1 year, extendable for periods of equal or shorter terms. After 3 consecutive years as a temporary resident, foreign employees are entitled to apply for permanent residence.

Citizens of Mercosur countries may apply for temporary Mercosur residence in Argentina without the need to present a work contract to the authorities. Temporary Mercosur residence is granted for 2 years and enables the individual to work and to apply for permanent residence on expiry of the temporary residence.

HIRING OPTIONS

Employee

Full-time, part-time, fixed-term, indefinite-term employees or trainees.

The following factors tend to indicate a labor relationship: (i) availability to work for their employer; (ii) an employer who directs and subordinates the individual; (iii) an employer who instructs the services and duties required and creates the individual's schedule; (iv) if the individual renders the same services as other employees; (v) if the individual has identification and a corporate email from the employer; and (vi) if the individual works for the employer on an exclusive basis. Courts will also look at the extent to which the worker depends economically on the employer and if the employee is remunerated with a fixed amount.

Independent contractor

Contractors should only be engaged where there is no labor relationship – that is, no direction/subordination or economic dependence or other indicators of a labor relationship as outlined above.

Misclassification – that is, failure to register an individual as an employee – or submission of an incomplete or defective registration carries the risk of severe sanctions and fines from the authorities, including amounts owed to social security for unpaid contributions. In addition, steep fines are levied upon statutory severance, including the doubling of the amount of severance owed to a (misclassified) employee. An additional fine equivalent to 50 percent of the unpaid amount of the severance is also applicable if the employer does not pay the correct severance payment as requested by the contractor and the contractor files a judicial claim for this amount.

Agency worker

Employers may engage workers through agencies. Agencies must be authorized by the authorities to function as an agency.

The employer is jointly and severally liable with the agency for all labor obligations arising from the worker's employment.

Article 30 of the Labor Contract Law No. 20,744 (LCL) requires the employer to ensure that the agency complies with all applicable labor and social security obligations regarding the engaged worker, including the payment of the social security contributions, occupational risk insurance policy or life insurance policy.

EMPLOYMENT CONTRACTS & POLICIES

Employment contracts

There is no general legal requirement to execute employment contracts in a specific form – meaning that they can, for example, be in writing or made orally, unless a specific law or collective convention applies and indicates otherwise.

Notwithstanding, employers are advised to enter into a written employment contract.

Probationary periods

The maximum permitted duration of a probationary period is 3 months. After the end of the 3 month period, the employee will turn into an indefinite term employee.

Policies

The law does not require employers to have specific policies in place. Notwithstanding, there are some policies that are strongly recommended to prevent potential conflict, such as bonus policies.

Third-party approval

Third-party approval is not required for employment contracts or any policies.

LANGUAGE REQUIREMENTS

There are no statutory requirements to translate employment contracts, policies or other documents. However, books and accounting records must be kept in the Spanish language. Further, every document filed with an Argentine court must be in Spanish, or a certified translation executed by an Argentine sworn translator must be provided.

WORKING TIME, TIME OFF WORK & MINIMUM WAGE

Employees entitled to minimum employment rights

The Labor Employment Contract Law No. 20,744 (LCL) governs the minimum employment rights in Argentina.

Pursuant to Article 3° of the LCL, the law governs everything related to the validity, rights and obligations of the parties, provided the employment contract is performed in Argentina, even if the contract was entered into abroad.

The LCL applies to "workers," which covers not only employees working under an employment contract, but also other individuals who personally perform work or provide services for the employer.

For this purpose, "work" should be understood as any legitimate activity that is provided in favor of someone who has the power to direct that work, through the payment of remuneration for those activities and/or services rendered.

The main factors that tend to indicate that an individual is an employee rather than a worker or self-employed worker are:

- The employee must be available to work for their employer or
- The employer directs and subordinates the employee, appoints the services and duties required and orders the employee to comply with a schedule.

Courts also consider the extent to which the worker depends economically on the income obtained from the alleged employer.

Working hours

The general maximum number of hours is 8 hours per day or 48 hours per week for all employed workers in public or private enterprises. Each extra hour worked above these limits is deemed overtime.

Notwithstanding the foregoing, Article 3° of Law No. 11,544, in its subsections a), b) and c), regulates exceptions to the abovementioned maximum limitation on working hours. The limitations do not apply to employees performing duties under the form of a "job team" – that is, working in a special coordinating rotation system – nor to employees performing duties in high-level positions (eg, main managers or directors).

Overtime

Employees in Argentina are allowed to perform overtime. Overtime is only compulsory in cases of danger, accidents or imminent force majeure, or by exceptional demands of the national economy or the company (Article 203° of the LCL).

Overtime must be paid with a surcharge of 50 percent, calculated using the employee's usual salary if the overtime hours were worked during business days, and 100 percent on Saturday after 1pm, Sunday or holidays. In no event may employees work overtime of more than 3 hours per day, 30 hours per month or 200 hours per calendar year.

Wages

The national minimum wage (NMW) is updated regularly by the National Council of Employment dependent of the Ministry of Work, Employment and Social Security (Ministry). The NMW rate as of February 2023 is ARS67. 743 per month (by means of Resolution No. 15/2022 of the Labor Ministry).

Most CBAs also provide for a specific minimum wage applicable to employees subject to the CBA.

Vacation

Employees with less than 5 years seniority are entitled to 14 calendar days after 6 months of work. This increases to 21 calendar days for employees with between 5 and 10 years of seniority, 28 days for employees with between 10 and 20 years of seniority and 35 days for employees with more than 20 years of seniority. For employees with less than 6 months of service, employers must grant 1 day of vacation per worked month. Companies should grant vacation to their employees between October 1 to April 30 of the following year.

Sick leave & pay

Sick or accident leave of up to 3 months per year must be provided to employees with less than 5 years of seniority, while 6 months must be granted to employees with seniority of 5 years or more. For employees with "family dependents" – generally understood to be the immediate family that economically depends on the employee's wage and labor benefits – these periods are doubled to 6 and 12 months, respectively.

Maternity/parental leave & pay

Pregnant employees may take leave of 45 days prior to giving birth and up to 45 days after giving birth. However, the employee may choose to reduce the leave prior to giving birth, as long as it is not less than 30 days, and may add those days to the maternity leave period after the birth of the child. In the event of premature birth, the period of the leave that has not been taken before the birth will be added to the leave period after the childbirth. Further, the employee is entitled to earn her gross remuneration, without any withholding contributions made to the social security system, during maternity leave. The ANSES (as defined below) pays the remuneration of employees during maternity leave.

Fathers are entitled to paid leave of 2 consecutive days for the birth of his child. There is no general regulation providing other parental leave after the birth of a child.

Other leave/time off work

Employees may also be entitled to leave for other purposes, such as bereavement or compassionate leave (3 days in case of the death of a spouse, parents or child, and 1 day in case of the death of a sibling), marriage (10 days), and study leave (10 days per year).

DISCRIMINATION & HARASSMENT

The law prohibits discriminatory acts or omissions based on race, religion, nationality, ideology, political or trade union opinion, sex, age, economic position, social condition or physical characteristics.

In addition, Argentina has ratified international antidiscrimination conventions, such as the Convention of Belem do Pará and the Convention on the Elimination of All Forms of Discrimination against Women.

WHISTLEBLOWING

Whistleblowing is not yet regulated in Argentina.

BENEFITS & PENSIONS

The Social Security National Administration (Administración Nacional de la Seguridad Social or ANSES) is the authority in charge of the administration of the social security system in Argentina, called Sistema Integrado de Jubilaciones y Pensiones (SIJP). Employers and employees are required to make contributions to the SIJP which provides for old-age pension and disability benefits.

To qualify for a state-funded pension distribution, male employees must be 65 years old, while female employees must be 60 years old. In both cases, in order to qualify for pension the employee must have contributed to the SIJP for a minimum of 30 years.

Employers do not have a legal obligation to provide a private pension scheme for employees, as the employees are entitled to state pensions.

DATA PRIVACY

The Argentine Data Privacy Law No. 25,326 (Ley de Protección de los Datos Personales or LPDP) protects the personal data stored in files, registers, data banks or other technical storage of data processing, whether public or private, in order to guarantee the right to honor and privacy of the data of individuals, as well as to restrict the access to such information, in accordance with the provisions set out in Article No. 43, third paragraph of the Argentine National Constitution.

RULES IN TRANSACTIONS/BUSINESS TRANSFERS

Where there is an asset transfer that qualifies as a business transfer, all obligations arising from the employment contracts that the transferor has executed with its employees are taken on by the transferee after the transfer. Employment contracts continue with the transferee and the employees retain their seniority with the transferor and the rights arising from their contracts. In all cases, the employees may provide their written consent before the transfer. Without such consent, the employee may terminate the employment, with the right to compensation.

Although, in practice, both internal consultations and collective consultation with trade unions are required before a business transfer takes place, the transferor and the transferee are not required by law to inform or consult employees on a business transfer.

The transferor and the transferee are jointly and severally liable for any dismissals that arise due to the transfer.

EMPLOYEE REPRESENTATION

Argentina is a highly unionized country with approximately 3,100 active trade unions with considerable political power. There are unions in nearly all sectors or industries.

A trade union must be recognized by the Ministry. Only recognized and authorized unions may enter into a CBA. Employers cannot recognize an unauthorized union voluntarily, even for collective bargaining purposes.

The National Constitution sets out collective labor rights in its Article No. 14 (bis), guaranteeing unions the right to collectively bargain and the right to strike.

CBAs are common in Argentina. There are different types of CBAs depending on the sector in which they will be enforceable. Some CBAs only govern employees within a single company, whereas other CBAs govern employees performing certain activities in a geographical region or industry.

TERMINATION

Grounds

Cause is not required for termination of employment; however, it is required to avoid payment of statutory severance. There is no exhaustive and/or exemplary list of behaviors that constitute cause for dismissal; therefore, whether a dismissal is with or without cause will depend on judicial judgment on a case by case basis.

Who is subject to termination laws?

All employees.

Prohibited or restricted terminations

Public employees and union delegates cannot be dismissed without cause and without complying with the statutory procedure for these terminations. All other employees may be dismissed with payment of statutory severance, which will differ based on the case (eg, maternity or illness).

Pregnant employees are protected from dismissal. If a pregnant employee is dismissed within the period of 7.5 months before or after the date of childbirth, the pregnancy will be considered the cause of the dismissal, entitling the employee compensation for the discrimination equivalent to their annual salary, in addition to the applicable severance payment.

Further, if the dismissal occurs 3 months before the marriage of an employee or 6 months after it, the dismissed employee will be entitled to special compensation.

In order to dismiss employees while they are on sick leave, employers must pay a special severance payment (ie, full severance payment applicable for dismissal without cause, plus the salary which would have been payable during the entire time the illness would be expected to last, according to medical opinion).

Third-party approval for termination/termination documents

N/A.

Mass layoff rules

Prior to a mass dismissal, an employer must provide notice to the respective trade union that regulates the employer's industry. Collective consultation may be required depending on employee headcount.

Prior to executing or communicating dismissals or suspensions due to force majeure, economic or technological causes that affects more than:

- 15% of the employees where total headcount is less than 400
- 10% of the employees where total headcount is between 400 and 1,000 and
- 5% of the employees where total headcount is greater than 1,000

Employers must comply with the Preventive Procedure of Companies Crisis (PPC) before the Ministry. During such procedure, the company engages in negotiation with the respective union acting on behalf of their affiliates. The aim of this procedure is to avoid business shutdowns or bankruptcy. After the company files the request before the Ministry, the claim is forwarded within 2 business days of the filing to the other party for its response. After a response is made, a settlement hearing is scheduled within the next 5 business days. If a settlement is not reached, the Ministry opens a "negotiating period" that must not extend beyond 10 business days. If the parties still do not reach to an agreement within that period, the PPC process will conclude.

Notwithstanding this, in practice, this procedure normally takes longer than the law sets out.

Notice

In order to proceed with termination, employers must give notice to employees before the dismissal. The term of this notice will depend on the seniority of employees:

- During their probationary period, notice must be given to employees 15 days before termination
- In order to dismiss employees who have completed their probationary period but who have less than 5 years of seniority, notice must be given 1 month prior to the dismissal and
- Employees with more than 5 years' seniority must receive 2 months' notice before their dismissal.

Statutory right to pay in lieu of notice or garden leave

Employers are permitted to pay in lieu of notice. Current legislation does not regulate or prohibit garden leave.

Severance

An employee who is dismissed without reasonable cause is entitled to statutory severance of 1 month's salary for each year of service, or period longer than 3 months. This amount is calculated using the employee's highest monthly, regular compensation received in the last 12 months of work. This baseline cannot be more than 3 times the "monthly payment," which is the average of all compensation set out in the applicable CBA at the time of the dismissal; this average is periodically published.

If the employee is not subject to a CBA (typically, senior employees), the limits applicable to the activity in which they perform duties still apply. In no case will the amount of the compensation payable be less than 1 month of salary.

Currently, in the Vizotti case, the Supreme Court of Justice has raised the basis for calculating compensation subject to a limit, establishing that it will be 67 percent of the employee's monthly and usual compensation, the amount to be multiplied by the employee's years of service, based on constitutional reasons and in cases where the application of the legal limit imposes a reduction to the severance payment of more than 33 percent.

This severance payment may be reduced or increased in other types of termination (eg, force majeure and lack or reduction of work, death of the employee, employer bankruptcy, employee retirement, employee illness or employee pregnancy).

Further, on December 13, 2019, the administration enacted Decree No. 34/2019 to protect the employment market. Specifically, it implemented double compensation in the event of dismissal without cause, which is effective until June 2022. Recently, by means of Decree No. 886/2021, the national government increased severance based on the timing of the dismissal, as follows: (i) severance payment will be increased by 75 percent if the dismissal occurs between January 2022 and February 2022; (ii) will be increased by 50 percent if the dismissal occurs between March 2022 and April 2022, and (iii) by 25 percent if the dismissal occurs between May 2022 and June 2022.

This regime applied to those employees who were employed on or before December 13, 2019 and dismissed without cause between December 14, 2019 and June 30, 2022. However, this degree was not renewed. Accordingly, the law is not applicable to dismissals on or after July 1, 2022.

POST-TERMINATION RESTRAINTS

Non-compete, customers and services providers, non-solicitation and employee non-solicitation clauses are often

used, especially when the employer and employee negotiate the terms and conditions of the termination of the employment.

Restrictive covenants may be enforced post-employment, provided the employee receives compensation for the restrictions. Therefore, consideration is required for valid restrictive covenants. The amount must be fair and in accordance with the salary of the employee, their position in the company, the agreements that the company intends to impose and the extent (ie, period and territory) of the restrictive covenant.

The law does not specifically regulate restrictive covenants. However, most restrictive periods range between 2 and 5 years. Under certain circumstances, the court has enforced a 10-year post-termination restraint period, based on the business and the amount of consideration paid to the employee.

Where an employee is in breach of an agreement, the employer may file a claim against the employee in court requesting compensation for damages. The complaint may include injunctive relief to stop the violation immediately. Alternatively, courts may declare the covenant null and void if it has been drafted too widely.

WAIVERS

Pursuant to the LCL, any executed agreement that suppresses or reduces rights granted by the LCL, labor laws related to specific industries, collective agreements or individual employment contracts, either at the time of their agreement or execution, or the exercise of the rights arising from its termination, shall be null and void.

REMEDIES

Discrimination

Compensation is available as a remedy for discrimination or harassment. In the event of a complaint based on harassment, the employee may file a claim requesting the payment of the statutory severance payment applicable to dismissals without cause and an additional amount for the pain and/or emotional distress caused by the harassment.

Employers are liable for the acts of their employees. Therefore, the employer and the harasser are jointly and severally liable for the payment of any compensation granted to the victim.

Unfair dismissal

Employees may challenge a dismissal without cause within 2 years of the dismissal and seek payment of statutory severance, plus interest and court fees. The complaint must be filed before the labor courts.

Failure to inform & consult

Not applicable for terminations as there are no consultation obligations.

CRIMINAL SANCTIONS

Breaches of labor law do not entail a criminal breach or sanction unless such a breach or offense is specifically regulated by the National Criminal Code as a crime. In that case, criminal sanctions will be applied for the breach of criminal law and not for the breach of labor law.

KEY CONTACTS

Alberto Rubio
Partner
DLA Piper (Argentina)
a.rubio@dlapiper.ar
T: +5411 4114 5500
View bio

Florencia Fabio
Associate
DLA Piper (Argentina)
f.fabio@dlapiper.ar
T: +5411 41145500
View bio

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