



GLOBAL EXPANSION GUIDEBOOK EMPLOYMENT

Chile



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INTRODUCTION

Welcome to the 2024 edition of DLA Piper's *Global Expansion Guidebook – Employment*.

GLOBAL EXPANSION GUIDEBOOK 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 *Global Expansion Guidebook* 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 2024 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.

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CHILE



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LEGAL SYSTEM, CURRENCY, LANGUAGE

Continental law. The official currency is the Chilean peso (CLP). The official language is Spanish.

CORPORATE PRESENCE REQUIREMENTS & PAYROLL SET-UP

A foreign entity seeking to hire an employee in Chile does not need to have a corporate presence in Chile. However, in such case, the company must appoint a representative in Chile for the sole purpose of acting on its behalf in case of any review by the authorities of labor and social security compliance – usually a payroll provider. The representative should have power to comply with the social security obligations of the foreign company if that company does not have a Chilean tax ID.

PRE-HIRE CHECKS

Required

None. However, an immigration check is recommended to ensure the employee has the right to work legally in Chile.

Permissible

In general, employers are permitted to check education and prior employment records. Employers may check financial history, health, drug/alcohol usage and criminal records in very limited circumstances when such information is directly relevant to the position for which the candidate is considered. No background checks may be based on any status protected by the Chilean anti-discrimination statute, including checks based on union membership or political affiliation. Furthermore, Chilean law expressly forbids conditioning the hiring of an individual based on the absence of the following statuses (a) pregnancy; (b) HIV; (c) cancer; (d) genetic mutations or alterations; and (e) financial debts, except for some specific cases.

IMMIGRATION

In 2022, a new law on immigration entered into force in Chile. Under this new system, the request for visas is carried out through the Immigration Service's website. In general, a visa takes around 4 to 6 months to be issued following the submission of the requested information.

Foreigners who travel to Chile on business trips do not require a special permit to do so as those activities are covered by the status of tourist. Foreigners may enter Chile for tourism purposes without a visa unless their country demands a tourism visa for Chilean citizens, in which case a tourism visa is required to enter Chile. Any tourism entrance is limited to a maximum of 90 days, renewable in exceptional circumstances for a similar term.

Foreigners may work in Chile after obtaining a proper permit from the immigration authorities.

HIRING OPTIONS

Employee

Indefinite, fixed-term or task-specific. Employees may be hired part-time (ie, up to 30 hours of work per week) or full-time.

Fixed-term employment agreements have a maximum duration of 12 months. However, this may be extended to 24 months for employees holding a technical or professional title granted by an educational institution recognized by Chile, but this alternative is almost unused in practice.

Independent contractor

Permissible. Chilean law authorizes companies to outsource various kinds of services, including the core business, or specific tasks, such as cleaning or canteen services. In this case, workers are dependent and subordinated to the contractor company rather than to the principal (ie, client).

If the contractor company breaches labor or social security payment obligations towards its employees (including severance compensation), the principal (ie, client) is jointly liable for them, limited to the period that workers were assigned to render services for the principal. The principal (ie, client) may mitigate against such liabilities by regularly checking compliance with employment and social security obligations.

Agency worker

Outsourcing labor through personnel supply companies may only be done for specific purposes defined by law and only for short periods of time, which vary according to the ground invoked for using agency services, such as temporary replacement of sick employees. The personnel supplier is responsible for the worker and is required to satisfy the respective social security and labor obligations. In cases where these obligations are not met, the company who has obtained the temporary worker is liable in total or on the whole for employment obligations of the employer.

EMPLOYMENT CONTRACTS & POLICIES

Employment contracts

As a general rule, employment contracts must be made in writing. If the employer does not provide written terms of employment within 15 days of the employee's start date, the law will presume the conditions alleged by the employee valid.

Individual labor contracts must contain certain provisions, including the position of the employee and description of the work to be rendered; the place of work; the remuneration to be paid by the employer; and the term of payment of the compensation, which cannot exceed monthly periods.

Although offer letters are valid in Chile, the execution by the employee does not exempt the company from providing an employment agreement with the minimum statutory provisions.

Probationary periods

Chilean law does not have regulations in relation to probationary periods, with the exception of household personnel. Instead, it is market practice for companies to use fixed-term employment agreements as *de facto* probationary periods. If an employee's performance during the initial fixed term is satisfactory to the employer, the employer will renew the employment contract with the employee.

If, for any reason, the employee gains legal dismissal protection during the fixed term *de facto* probationary period, the company may not terminate the employment agreement without prior authorization of a court of law (see Restricted or Prohibited Terminations).

Policies

Companies with 10 or more employees must implement internal rules (*Reglamento Interno de la Empresa*).

The internal rules must cover the following mandatory issues:

- Hiring and termination of employment
- Rest periods and leaves
- Different remunerations paid by the company
- Rules regarding payment of remuneration
- Duties and prohibitions for the employees
- Rules regarding the executive staff that will handle the worker's questions and complaints
- Rules regarding different issues in relation to the age and sex of the employees, and the rules regarding adjustments that the company may need to perform for disabled employees
- Rules regarding compliance with social security obligations, military service and Chilean ID rules on hygiene and safety in the company
- Penalties in case of infringement of the internal rules procedure to impose such penalties

- Rules regarding sexual harassment and
- Rules regarding equal remuneration between men and women.

Additionally, companies may incorporate other policies as part of the internal rules of the company.

Third-party approval

There are no regulations regarding 3rd-party approval. However, the Labor Directorate may review the internal rules at the request of any employee or union and may request changes if it decides that any provision may be illegal.

LANGUAGE REQUIREMENTS

Documents may be drafted in any language, but pursuant to opinions of the Labor Directorate, the employee should always receive a copy translated into Spanish. A bilingual version of each document is recommended.

WORKING TIME, TIME OFF WORK & MINIMUM WAGE

Employees entitled to minimum employment rights

All.

Working hours

Normal working hours cannot exceed 45 hours per week and 10 hours per day. The 45-hour workweek cannot be spread over less than 5 days or more than 6 days. An employee is required to take a 30-minute lunch break, which is not included in working hours. Certain types of employees are not subject to working hour limitations (eg, sales staff that provides services outside the company premises, managers and teleworkers).

However, as of April 26, 2024, the working week may not exceed 44 hours per week. This maximum will decrease to 42 hours in 2026, and 40 hours per week in 2028.

Overtime

A maximum of 2 hours of overtime is allowed per day. Such overtime must be paid at a rate 50-percent higher than the employee's regular pay. Overtime must be agreed to in writing, and the agreement cannot have a duration that exceeds 3 months.

Wages

CLP460,000 (approximately USD470) is the current statutory minimum salary. Salary is payable on a monthly basis.

Chilean law provides that companies that earn profits in a fiscal year (January 1 to December 31) must share part of such profits with its personnel by distributing 30 percent of net profit, calculated in proportion to the employee's yearly salary. The basis to determine profits is the corporate taxable income, subject to certain

adjustments, less 10 percent of net equity. However, the employer may pay a bonus of 25 percent of the yearly salary in lieu of the profit-sharing obligation. In this case, the bonus cannot exceed a maximum of the 4.75 monthly minimum wages (approximately USD2,230) regardless of the level of salary of the employee.

The company and the employees may agree on a different profit-sharing system, provided the payment to the employee is not lower than 1 of the 2 abovementioned alternatives. However, annual performance-based bonuses programs cannot be used to replace this profit-sharing obligation.

Vacation

Employees are entitled to 15 working days (Monday to Friday) paid vacation after 1 year of continuous employment. Employees with 10 or more years of experience receive an additional day of vacation for every subsequent 3 years of service.

Sick leave & pay

There are different regulations for sick leave depending on whether the cause is work related or not.

In work-related sick leave, the remuneration of the employee is paid by the relevant mutual aid fund to which the company is enrolled up to a cap of approximately USD3,170. In such cases, the leave will have the duration prescribed by the relevant physician, up to 52 weeks, which may be extended for another 52 weeks.

In the case of non-work-related sick leave, there is no limit to the number of sick days that employees may take. Employees are paid their normal wage (subject to a cap of approximately USD3,170 per month) through social security subsidies from the 1st day of sickness if the total number of sick days is greater than 10. When the total number of sick days is 10 or fewer, the employee receives subsidies from their 4th day of sickness only. As the subsidies are funded through employee contributions, in order to qualify, the law requires employees (among other requirements) to have paid into the system for a certain amount of time. Sick leave requires a medical certificate.

Maternity/parental leave & pay

Mothers receive 210 days of maternity leave paid by a government subsidy. This includes 6 weeks of pre-birth leave, 12 weeks of after-birth leave and either 12 additional weeks of leave or 18 weeks of half-time work. A portion of this final parental leave can be transferred to the other parent.

Other leave/time off work

Employees may also be entitled to leave for other purposes, such as death of close relatives (children, parents, siblings), preventive health exams, receiving shots in case of vaccination campaigns, voting, illness of children and volunteering as firefighters, among others.

DISCRIMINATION & HARASSMENT

Characteristics protected from unlawful discrimination include race, color, sex, maternity, breastfeeding, age, marital status, union membership, religion, political opinion, citizenship, ethnicity, socioeconomic status, language, beliefs, participation in professional trade associations, sexual orientation, gender identity, family situation, personal appearance, illness, disability and social origin.

WHISTLEBLOWING

There are no regulations regarding whistleblowing in non-governmental entities. However, an employer may implement a whistleblowing policy and regulate it in the company's Internal Regulations.

BENEFITS & PENSIONS

The employer is required to withhold from the salary the following amounts for social security purposes:

- 10 percent for retirement savings (salary capped at 84.3 *UF Unidades de Fomento* – approximately USD3,170)
- 7 percent for health insurance (salary capped at 84.3 *UF Unidades de Fomento* – approximately USD3,170)
- 0.6 percent for unemployment insurance (salary capped at 126.6 *UF Unidades de Fomento* – approximately USD4,750). In case of fixed-term employment contracts, there are differences.

Contributions for retirement, disability, death and health insurance are not mandatory in the following circumstances:

- Foreign staff with technical skills or university diplomas who prove that they have protection abroad for contingencies of health, old-age retirement, disablement and death or
- Seconded workers from a country with which there is a social security treaty in force between Chile and the host country.

However, in both cases above, contributions for unemployment insurance and work accident and professional diseases insurance are still mandatory.

In addition, employers are required to contribute to a mandatory work accident and professional diseases insurance that compensates and/or protects workers when they are injured on the job or are diagnosed with occupation-related diseases. This insurance is fully funded by the company. Moreover, employees also pay contributions for disability and survival insurance, insurance for the accompaniment of children with serious illnesses and unemployment insurance.

Employers have no legal obligation to provide fringe benefits, other than benefits which may be voluntarily agreed upon in individual or collective agreements. There is no legal obligation to provide catering facilities, meals and transportation. However, it is a common practice to pay modest allowances in compensation for such perks.

Additionally, the labor reforms that took effect in April 2017 bar employers from extending benefits negotiated as a part of collective bargaining agreement to non-union employees without obtaining the union's consent.

DATA PRIVACY

The employer is obliged to maintain the privacy of the information and personal data related to its employees. The right to personal data protection has the status of constitutional right, and, therefore, any breach may lead to litigation for impairment of fundamental rights.

RULES IN TRANSACTIONS/BUSINESS TRANSFERS

There is no obligation in Chile to inform unions or labor authorities of any transaction or business transfer.

Chilean law permits the transfer of all or part of a business, in which case, in principle, the new company that continues the operations will be considered the employer of the employees who work for that business. Under this scenario, the employees maintain seniority as well as all their rights and obligations under the employment agreements and practices in place with the former company, which must be honored by the new employer.

If the new company must change the employment conditions of the employees who will be transferred with the business, termination of the employment agreement by the transferring company and a new employment agreement with the new company generally are the most suitable solutions.

EMPLOYEE REPRESENTATION

Chile recognizes the right of "freedom of unionization," which includes the right to be part or not to be part of a union.

Statutes regulate the processes and procedures necessary for the formation and management of unions.

Unions only represent its members during collective bargaining and in collective claims. In order to act in particular claims of its members, the union must have a mandate given by that individual.

Unions cannot act on behalf of non-unionized staff.

There are no works councils or similar employee representative groups.

TERMINATION

Grounds

There is a rigid and detailed statutory regime for termination in Chile regulating termination with or without cause, voluntary resignations and mutual agreements, among others.

Termination with no cause is subject to restrictions. Companies have full ability to terminate employments with no cause (ie, at will) only in the case of top managers and personnel in the sole trust of the company. For other employees, the company must show termination grounds (eg, economic needs). All employees who have been employed for at least 1 year are entitled to severance in the case of termination at will or on grounds of company

needs. In the latter case, if the company is not in the position to demonstrate such economic needs, the termination will still be valid but, in case of lawsuits, a surcharge over the applicable severance payments may be imposed by the court in addition to the severance that must be paid as a result of the termination.

The law contains provisions on for-cause terminations due to, for example, lack of probity, serious breaches of an employee's obligations under the employment agreement, non-attendance at work or aggression against the employer, and regulates voluntary resignation and termination by mutual agreement. These causes of termination do not entitle the employee to severance pay.

Employees subject to termination laws

All employees.

Restricted or prohibited terminations

Among others, pregnant women; mothers for up to 1 year and 12 weeks after birth of a child; union leaders; and employees whose children, spouse or civil partners have died cannot be terminated without prior court approval. Likewise, there may be restrictions applicable to terminating employees who are on sick leave.

Third-party approval for termination

No 3rd-party approval is required, except for the cases referred to above (see "Restricted or Prohibited Terminations").

Mass layoff rules

There are no specific rules regarding mass layoffs.

Notice

30 days' notice for unilateral termination of managers and other specified employees (ie, termination with no cause – see "Grounds"). 30 days' notice for termination of any employee based on redundancy (ie, termination on grounds of company needs – see "Grounds").

Notice is required for standard for-cause removal reasons. The notice must be handed over to the employee at the time of termination of the employment agreement or within the following 3 business days.

Statutory right to pay in lieu of notice or garden leave

The company has the statutory right to pay in lieu of notice.

There are no garden leave rules in Chile and, in principle, any anticipated contractual clause on that matter would be considered void.

Severance

If the employee has worked in a position uninterrupted for more than 1 year and is terminated with no cause (ie, at will) or on the grounds of company needs, severance pay is equal to 30 days' remuneration for every year worked and fraction of a year over 6 months spent in the service of the same employer, capped at 330 days and

at a maximum monthly remuneration of UF90 (approximately USD3,380). Employment contracts may specify more generous severance terms.

POST-TERMINATION RESTRAINTS

It is not against Chilean law to include post-termination restraints in an employment contract. However, because the Chilean Constitution explicitly protects an employee's right to work, courts may be unwilling to enforce such restraints.

Non-competes

Technically not prohibited, but may be difficult to enforce due to the constitutional protections identified above.

To date, the only post-termination non-competes accepted by the courts are those that provide compensation to the employee to compensate for the prohibition against competing. There are no clear parameters regarding the amount of the bonus and the maximum term of the non-compete – however, a maximum term of 2 years is customary.

Customer non-solicits

Technically not prohibited, but may be difficult to enforce due to the constitutional protections identified above. A customer non-solicit may need to rise to the level of unfair competition in order for a court to enforce the clause.

Employee non-solicits

Technically not prohibited, but may be difficult to enforce due to the constitutional protections identified above.

WAIVERS

While the employment agreement is in force, the employees cannot waive most legal rights. After the termination of employment agreements, rights can be waived by the employee, usually signing a final settlement agreement, known as "finiquito."

REMEDIES

Discrimination

Employees can file a lawsuit against the company in order to look for the cessation of the discrimination conduct and also for compensation of damages. The procedure requires from the employee to submit evidence, and in such event, the company will have to demonstrate that the disputed decision is legitimate and if applicable, that the decision was the alternative that impaired the employee's rights the least, and that the decision is reasonable. If the judge rules against the employer, it may be sanctioned by being banned from entering into contracts or participating with the State of Chile.

Unfair dismissal

An employee could file a claim alleging wrongful dismissal before a labor court. If the employer fails to prove that the termination was based on a reason allowed by statute and precisely outlined in the termination notice, the court will require the employer to pay additional compensation to the employee in addition to severance pay (which ranges from 30 percent to 100 percent of the severance compensation, depending on the reason for dismissal).

Failure to inform & consult

Not applicable for this jurisdiction.

CRIMINAL SANCTIONS

Not applicable for this jurisdiction.

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