INTRODUCTION


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 2019 edition of our popular guide covers all of the employment and labor law basics in 60 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

Tim Marshall
Co-Chair, Global Employment practice
tim.marshall@dlapiper.com
This publication is provided to you as a courtesy, and it does not establish a client relationship between DLA Piper and you, or any other person or entity that receives it.

This is a general reference document and should not be relied upon as legal advice. The application and effect of any law or regulation upon a particular situation can vary depending upon the specific facts and circumstances, and so you should consult with a lawyer regarding the impact of any of these regimes in any particular instance.

DLA Piper and any contributing law firms accept no liability for errors or omissions appearing in this publication and, in addition, DLA Piper accepts no liability at all for the content provided by the other contributing law firms. Please note that employment law is dynamic, and the legal regime in the countries surveyed could change.
COLOMBIA

LEGAL SYSTEM, CURRENCY, LANGUAGE

Civil law. Colombian Peso (COP $). Spanish.

CORPORATE PRESENCE REQUIREMENTS & PAYROLL SET-UP

In principle, a foreign entity cannot directly engage employees in Colombia without setting up a branch or subsidiary. Proper payroll registrations are required (both employer and employees). Social Security (in respect of health, pension and labor risks – see benefits and pensions), payroll taxes, and union contribution withholdings may apply (if employees are unionized) and withholding tax may apply depending on the employee’s income.

PRE-HIRE CHECKS

Required

Immigration compliance.

Permissible

Pre-employment background checks are permitted and it is very common to use specialized companies for these services (ie, third party validations of background checks).

Background checks could include educational history and professional qualifications, employment history, consumer credit checks, civil litigation, criminal records, OFAC/Global Sanctions Lists, driver’s license check, and passport/ID validation, among others.

On the initiation of the recruitment process, the applicant must grant express written consent to conduct the background checks.

Under Colombian law, there are few restrictions on an employer’s right to request substantiating documents and to confirm the information provided by the applicant (for example, regarding health conditions, pregnancy, drug use, family situations and political tendency).
IMMIGRATION

A foreign national needs a temporary visa authorizing him/her to live and work in Colombia. Work Visas in Colombia (Migrant Visa or a Visitor Visa with a work permit) are granted for 1 to 3 years in the case of the Migrant Visa and for up to 2 years in the case of the Visitor Visa on a discretionary basis and are renewable indefinitely. After 5 years holding a Migrant Visa, it is possible to apply for a residency visa. The general rule is that the applicant themselves must file the visa application before the Ministry of Foreign Affairs in Bogotá, Colombia, or before a Colombian Consulate abroad. However, if the process is conducted before the Ministry of Foreign Affairs in Colombia, it is possible to file the visa application through a proxy.

Other visa alternatives may be available depending on the activities to be performed in Colombia by a foreign national or his or her personal situation.

HIRING OPTIONS

Employee

Indefinite, fixed-term, or for the duration of a project.

Fixed-term agreements cannot exceed 3 years but can be extended indefinitely. If the duration of the contract is less than 1 year, it can be extended 3 times (with each renewal equal to or less than the initial term) but after the third renewal the contract can only be extended for periods of 1 year.

Independent contractor

Independent contractors may be engaged. Specific rules regarding direction and control, subordination and autonomy in how they perform the work must be followed in order to reduce misclassification exposure. Independent contractors are obliged to pay social security contributions monthly in arrears. As from June 2019, the contracting company will be obliged to withhold the social security contributions from the contractor’s fees and make the relevant payment to the social security entities.

Agency worker

Staffing agencies or "temporary services agencies" are entities that provide services to third-party beneficiaries to temporarily assist in the development of their activities via individuals hired directly by the staffing agency (the agency acts as the individual’s employer).

Agency workers can only be hired in 3 cases:

- For occasional or sporadic activities
- For replacement of employees on vacation, maternity or sick leave
- To support production increases, for a period of up to 6 months (which is extendable for 1 further period of 6 months after which the employer must either terminate the engagement or hire the worker directly)

If none of these scenarios applies, the company receiving services from the agency could be considered the
employer of the agency workers and/or could be subject to monetary sanctions including a fine of up to 5,000 times the minimum monthly wage which can be imposed by the Ministry of Labor.

**EMPLOYMENT CONTRACTS & POLICIES**

**Employment contracts**

Written employment agreements are only mandatory for fixed-term agreements or employment agreements for the duration of a project but are generally recommended.

**Probationary periods**

Employees hired under an indefinite employment agreement can be subject to a probationary period of up to 2 months. Employees hired under a fixed-term employment agreement can be subject to a probationary period of up to 1/5 of the fixed term agreed upon (without exceeding 2 months).

**Policies**

Depending on the number of employees, internal working regulations and health and safety policies will be mandatory. Internal Regulations (*Reglamento Interno de Trabajo – RIT*) are mandatory under Article 105 of Colombian Labor Code for employer with more than 5 permanent employees in commercial business, or more than 10 employees in industrial companies, or more than 20 employees in agricultural, forestry or cattle companies. Health and Safety Regulations (*Reglamento de Higiene y Seguridad Industrial*) are mandatory under article 349 of Colombian Labor Code for employers with more than 10 permanent employees. An Occupational Health and Safety management system (*Sistema de Gestión de la Seguridad y Salud en el Trabajo*) is required for companies with more than 10 workers. Regardless of headcount, labor harassment and data privacy policies are mandatory. Additional corporate policies are permitted.

**Third-party approval**

No approvals required, save that Ministry of Labor authorization of the employment relationship is required if the employee is 15 to 18 years old.

**LANGUAGE REQUIREMENTS**

No statutory requirements, however Spanish is recommended as the Colombian authorities will require any employment document to be in Spanish or translated into Spanish.

**MINIMUM EMPLOYMENT RIGHTS**

**Employees entitled to minimum employment rights**

All.

**Working hours**

Up to 48 hours a week and 8 hours per day. Employees must have at least 1 paid day off every 6 days (usually
Sundays). The Colombian Labor Code allows employees to work 48 hours per week distributed over 5 days in order to also have the Saturday as a day of rest.

Special shifts are permitted according to the needs of companies.

**Overtime**

An employee may not be required to work more than 2 hours per day as overtime, or more than 12 hours in a given week. The ordinary working day is from 6:00 am to 9:00 pm. Overtime during the day is paid at a rate of 25% on top of the ordinary hourly rate. The working night is from 9:00 pm to 6:00 am; workers who ordinarily work during these hours must be paid 35% on top of the ordinary hourly rate. Overtime pay for night work is equivalent to 75% on top of the ordinary hourly rate.

Employers must have a special permit from the Ministry of Labor for overtime work.

Employees who perform functions of direction, trust or management, as well as employees who are engaged in intermittent activities or in activities of simple vigilance (such as security guards) provided they stay at the workplace are excluded from the above rules regarding the maximum work day and overtime.

**Wages**

The minimum wage is determined by the Colombian Government every calendar year. The minimum wage for 2019 is COP$828,116 per month. The minimum wage is increased annually using the IPC (Consumer Price Index) as a reference.

Salaries in Colombia can be agreed under the ordinary or integrated salary scheme.

Employees under the ordinary salary scheme are entitled to the following mandatory fringe benefits and payments, in addition to the monthly remuneration:

- Severance aid. Equivalent to 30 days of salary for every year of service (proportionally for fractions of a year).

- Interest on severance. Equivalent to 12% of the severance payment per year (proportionally for fractions of a year).

- June and December service bonus. Equivalent to 15 days’ salary, payable to the employee every calendar year. The first payment must be made on the last day of June and the second one must be made within the first 20 days of December, in proportion to the time worked during the respective calendar semester.

- Vacation. 15 working days of vacation for every year of service.

- Work clothes 3 times a year (April, August and December) to employees who earn less than twice the minimum wage.

- Transportation allowance (COP$97,032) for employees who earn less than twice the minimum wage.

The ordinary salary scheme is mandatory for salaries below 13 times the monthly minimum wage (COP$10,765,508 for 2019). If the proposed salary is equal or higher to that amount, an integrated salary scheme
could be used.

The monthly integrated salary includes the legal, social or fringe benefits provided to the employees, except for vacations (employees are entitled to 15 business days of vacation per year of service). In particular this includes the following:

- Severance aid (cesantías)
- Interest on severance aid (intereses a las cesantías)
- Legal service bonuses and extra-legal bonuses
- Any type of surcharge
- Sunday and holiday surcharge and days off
- Night work surcharge
- Subsidies and in-kind supplies
- Travel allowances, within Colombian territory or abroad
- Bonuses of all types and natures
- In general, any and all benefits that an employee receives in money or in kind, either regularly or sporadically, except for vacation

The minimum monthly integrated salary must be equivalent to 13 times the minimum wage.

**Vacation**

The employee is entitled to 15 business days of vacation per year and proportional to a fraction of a year.

**Sick leave & pay**

If an employee cannot work due to illness or an accident, a medical authorization from a Colombian Social Security entity must be obtained in order for the employee to get paid for the days during which the employee could not attend work. The employer pays sick leave during the employee’s absence (for an indefinite period) but, as from the third day of sick leave, the employer can claim the payment back from the social security system.

**Maternity/parental leave & pay**

Paid maternity leave for every employed pregnant or adoptive mother in Colombia is granted for 18 weeks. Mothers are entitled to 1 week before childbirth and 17 weeks after. For medical reasons the mother can have 2 weeks before childbirth or can have the 2 weeks before childbirth postpartum, which means that the maternity leave will last 18 weeks after childbirth. Adoptive mothers, and fathers in charge of the newborn in case of sickness or death of the mother, are also entitled to this maternity leave.
A male employee is given 8 business days of paid paternity leave when his spouse or significant other gives birth or he adopts a child.

**DISCRIMINATION**

Employers may not discriminate against employees or job candidates on the basis of: age, ethnic origin/race, sex, citizenship, disability, health conditions, religion, opinions, sexual orientation, marital status, union membership or any other criteria.

**BENEFITS & PENSIONS**

Employees in Colombia must be enrolled in the social security system (for pension, health and labor risks) and employers have the obligation to make the corresponding monthly contributions on time.

If foreign employees are covered by the pension system in their home country, they are not obligated to be enrolled in the pension system and to pay monthly contributions to the Colombian pension system.

Social security contributions must be made as follows:

<table>
<thead>
<tr>
<th>Contributions¹</th>
<th>Rate</th>
<th>Employer</th>
<th>Employee</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pension</td>
<td>16%</td>
<td>12%</td>
<td>4%</td>
</tr>
<tr>
<td>Health</td>
<td>12.5%</td>
<td>8.5%</td>
<td>4%</td>
</tr>
<tr>
<td>Solidarity pension Fund</td>
<td>1%-2%</td>
<td>N/A</td>
<td>1%-2%</td>
</tr>
<tr>
<td>Professional Risks²</td>
<td>0.348% - 8.7%</td>
<td>0.348% - 8.7%</td>
<td>N/A</td>
</tr>
<tr>
<td>Payroll Taxes³</td>
<td>4% or 9%</td>
<td>4% or 9%</td>
<td>N/A</td>
</tr>
</tbody>
</table>

¹The basis to calculate contributions to the social security system (pensions, solidarity pension fund, health and professional risks) is the ordinary monthly salary earned by the employee. However, if the monthly salary exceeds 25 times the minimum wage, contributions to the social security system will be calculated on the maximum basis of 25 times the minimum wage. Non-salary payments agreed between the employer and the employee are not included in the basis to calculate social security contributions, if such payments do not exceed 40% of the employee’s compensation. If these non-salary payments exceed 40%, the difference will be subject to social security contributions.

In case of employees earning integral salary, 70% of salary will be the basis to calculate contributions to the social security system. However, if 70% of the integral salary is more than 25 times the minimum wage, contributions to the social security system will be calculated on the maximum basis of 25 times the
minimum wage.

2 The contribution to the Solidarity Pension Fund only applies for employees who earn more than 4 times the legal minimum wage. This payment is equivalent to 1% of the monthly salary, but in the case of employees earning more than 16 times the minimum wage, the rate will be increased as follows: between 16 and 17 times the minimum wage, an extra 0.2%; between 17 and 18 times the minimum wage, an extra 0.4%; between 18 and 19 times the minimum wage, an extra 0.6%; between 19 to 20 times the minimum wage, an extra 0.8%; and between 20 and 25 times the minimum wage, an extra 1%. Contributions to the solidarity fund also have the cap of 25 times the minimum wage.

3 Contributions to SENA, ICBF, Family Compensation Fund (payroll taxes) shall be calculated based on the ordinary monthly salary earned by the employee, including any paid rest, such as vacation. For employees who earn less than 10 times the minimum wage, contributions to ICBF and SENA do not apply. In case of employees earning integral salary, 70% of salary will be the basis for this contribution. Non-salary payments are excluded from payroll taxes. Payroll taxes do not have any ceiling.

DATA PRIVACY

To process personal data, data controllers must provide a privacy notice to the affected employees prior to the collection and processing of personal data. In the case of data transfers, the privacy notice must contain the name of the transferee or the person to whom the information is transferred. All transfers of personal data to domestic or foreign third parties must be pre-approved by the data subject/employee.

Employees will have the right to know, update and correct their personal data. This right may be exercised in relation to partial, inaccurate, incomplete, split, or deceptive data, and/or data that is prohibited from or not authorized for processing (such as race or ethnic origin, political orientation, religious or philosophical orientation, and enrollment to unions or social organizations, among other items considered as sensitive information).

Employees can revoke the authorization granted for the processing of their personal data and could request to remove their personal information from the employers or subcontractor’s databases by filing a formal claim, save for information directly related to their employment (for example, HR core data, recruitment, performance, global compensation learning and training-related data and master data). This possibility is only applicable in the case of wrongful use of the employee’s information.

RULES IN TRANSACTIONS/BUSINESS TRANSFERS

Employment transfers may be implemented via employer substitution or the assignment of employment agreements, or by termination and re-hire. Employees transferred by substitution or assignment are entitled to receive at least the same benefits and to perform their work subject to the same terms and conditions as before
the transfer. The employer who has been substituted will be jointly responsible with the new employer as to the labor obligations arising prior to the employer substitution.

An employer substitution occurs (regardless of the will of the parties) when the following 3 criteria are met:

- Change of employer (for any reason)
- Continuity of establishment (understood as the core business of seller)
- Continuity of employment agreement

**EMPLOYEE REPRESENTATION**

Trade unions are prevalent in certain sectors, including the sugar, railway, automotive, oil and mining industries as well as the public sector (especially education and energy).

A minimum of 25 workers is required to maintain or establish a trade union in Colombia, so that where the company employs at least 25 employees, the employees can establish a company level union. Only the employees can form a union.

There are no work councils or other employee representatives.

**TERMINATION**

**Grounds**

An employer may terminate their employment relationship with an employee without incurring liability if any of the justified causes established by law exist, which are mostly based on misconduct or poor performance. A disciplinary process must be conducted before any termination with cause. Terminations without cause are also valid but will trigger severance obligations. In a dismissal not for cause no notice is required, but the employee will be entitled to compensation (indemnification) for unilateral termination as set out below.

**Employees subject to termination laws**

All employees.

**Restricted or prohibited terminations**

There are special cases where it is not possible to terminate an employment agreement without the authorization of the Ministry of Labor or a Labor Judge, even with just cause:

- Employees who are pregnant or on maternity leave (this protection extends to a father/domestic partner who is an employee when the mother is unemployed and included as her beneficiary with the social security authorities)

- Employees who are on health leave or have restrictions that substantially limit them to comply with their labor duties
Employees who are less than 3 years away from complying with the requirements to obtain a retirement pension

Also, union leaders cannot be terminated unless a labor judge authorizes it and only for the just causes established in Colombian Labor Code and the company’s policies and/or procedures.

**Third-party approval for termination/termination documents**

Third-party approval is required for restricted or prohibited terminations. No third-party approval is required in other cases, but it is common to have employees sign a labor settlement in front of the labor authorities (Ministry of Labor or Labor Judge).

**Mass layoff rules**

Depending on the number of employment agreements to be terminated, prior authorization from the Ministry of Labor may be required. This should take 2 months. However, usually the Ministry takes longer.

If the requirement for a collective dismissal (mass redundancy) is met (see threshold triggers below), the above authorization is mandatory. If the company does not have such authorization, the terminations shall be void by operation of law and the company will be obliged to re-engage the employees.

Simultaneously, the employer has to notify its employees in writing regarding the authorization requested before the Ministry of Labor.

A collective dismissal occurs when it affects:

- In a company employing between 10 and 50 employees, 30% of employees in a period of 6 months
- In a company employing between 50 and 100 employees, 20% of employees in a period of 6 months
- In a company employing between 100 and 200 employees, 15% of employees in a period of 6 months
- In a company employing between 200 and 500 employees, 9% of employees in a period of 6 months
- In a company employing between 500 and 1000 employees, 7% of employees in a period of 6 months
- In a company of more than 1000 employees, 5% of employees in a period of 6 months

**Notice**

At least 15 days' written notice is required in cases of poor performance. In cases of misconduct or termination without cause, no notice is required, and such terminations can be effective immediately.

**Statutory right to pay in lieu of notice or garden leave**

Not applicable under Colombian Law.

**Severance**
Unilateral termination without cause is lawful but will trigger severance obligations.

If the termination is unilateral and without cause, the employee will be entitled to receive an indemnification, in addition to the final wages. For employees with an indefinite term agreement, such indemnification would be calculated as follows:

- For employees earning less than 10 minimum legal monthly wages (in 2019 COP$8,281,160), the compensation is 30 days of salary for the first year of service and 20 days of salary for each additional year of service (proportional to the fraction of a year)

- For employees earning 10 minimum legal wages or more, the compensation is 20 days of salary for the first year of service and 15 days of salary for each additional year of service (proportional to the fraction of a year)

For employees with a fixed-term agreement, the severance would be equal to the salary owed to the employee until the term of the agreement expires.

For employees who entered into agreements for the duration of a project, the severance would be the estimated salary owed to the employee until the project concludes, however in no case can severance be less than 15 days of salary.

**POST-TERMINATION RESTRAINTS**

**Non-competes**

Post-termination non-compete clauses or agreements are not enforceable. However, such provisions are typically included in employment agreements because they can have a deterrent effect or create a sense of moral obligation on the part of an employee.

**Customer non-solicits**

Post-termination customer non-solicits clauses or agreements are not enforceable. However, such provisions are typically included in employment agreements because they can have a deterrent effect or create a sense of moral obligation on the part of an employee.

**Employee non-solicits**

Post-termination employee non-solicits clauses or agreements are not enforceable. However, such provisions are typically included in employment agreements because they can have a deterrent effect or create a sense of moral obligation on the part of an employee.

**WAIVERS**

Enforceable and advisable through a labor settlement before a Labor Judge or the Ministry of Labor. However, employees cannot waive their vested mandatory benefits or rights.
REMEDIES

Discrimination

No specific sanctions are in place.

Unfair dismissal

Employees will be entitled to receive an indemnification, in addition to the final wages. Such indemnification would be calculated as follows:

- For employees on indefinite employment agreements earning less than 10 minimum legal monthly wages (in 2019 COP$8,281,160), the compensation is 30 days of salary for the first year of service and 20 days of salary for each additional year of service (proportional to the fraction of a year)

- For employees on indefinite employment agreements earning 10 minimum legal wages or more, the compensation is 20 days of salary for the first year of service and 15 days of salary for each additional year of service (proportional to the fraction of a year)

- For employees under fixed-term employment agreements the labor indemnification would be the equivalent to the pending payments between the effective date of termination and the date of termination agreed under the agreement

- For employees who entered into agreements for the duration of a project, the severance would be the estimated salary owed to the employee until the project concludes, however in no case can it be less than 15 days of salary

Failure to inform & consult

Not applicable under Colombian law.

CRIMINAL SANCTIONS

Employees may be subject to criminal sanctions if they do not honor their non-disclosure or confidentiality agreements.

Employers may be subject to criminal sanctions if they perform actions to reduce enrollment to unions or to discourage such enrollment.
KEY CONTACTS

Diana Zuleta Martínez
DLA Piper Martinez Beltran
dzuleta@dlapipermb.com
Disclaimer

DLA Piper is a global law firm operating through various separate and distinct legal entities. Further details of these entities can be found at www.dlapiper.com.

This publication is intended as a general overview and discussion of the subjects dealt with, and does not create a lawyer-client relationship. It is not intended to be, and should not be used as, a substitute for taking legal advice in any specific situation. DLA Piper will accept no responsibility for any actions taken or not taken on the basis of this publication.

This may qualify as 'Lawyer Advertising' requiring notice in some jurisdictions. Prior results do not guarantee a similar outcome.

Copyright © 2017 DLA Piper. All rights reserved.