



# GUIDE TO GOING GLOBAL EMPLOYMENT

*Peru*



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## 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](http://www.dlapiper.com) or contact:

Brian Kaplan  
Co-Chair, Global Employment practice  
[brian.kaplan@dlapiper.com](mailto:brian.kaplan@dlapiper.com)

Ute Krudewagen  
Co-chair, International Employment practice  
[ute.krudewagen@dlapiper.com](mailto:ute.krudewagen@dlapiper.com)

Pilar Menor  
Co-Chair, Global Employment practice  
[pilar.menor@dlapiper.com](mailto:pilar.menor@dlapiper.com)

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## PERU



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### LEGAL SYSTEM, CURRENCY, LANGUAGE

Civil law. The official currency is the Sol (PEN). The official language is Spanish.

### CORPORATE PRESENCE REQUIREMENTS & PAYROLL SET-UP

#### Corporate Presence Requirements

A foreign entity may directly engage employees in Peru without setting up a branch or subsidiary, subject certain business and tax considerations. Because of this, to engage employees in Peru, it is strongly recommended to set up a local entity or branch and register with the local tax authorities.

#### Payroll Set-Up

Proper payroll registrations are required. Payroll must be registered by an employer using the Tax Authority's (SUNAT) webpage. Employers must pay social security contributions amounting to 9 percent. Employees must contribute approximately 12 percent of their salary to the social security system which is withheld by the employer. Income tax is also withheld by the employer from employees' salaries, based on a progressive scale with a maximum rate of 30 percent.

### PRE-HIRE CHECKS

#### Recommended

Generally speaking, there are no mandatory pre-hire checks, but immigration checks are highly recommended for foreign employees to ensure that the employee has the right to work legally in Peru.

#### Required

Specific companies that perform high-risk activities (eg, in the mining industry) must perform occupational medical exams on their candidates.

#### Permissible

In general, employers are permitted to check candidates' education and prior employment history. Employers may also conduct (i) financial checks for jobs that involve handling money; (ii) drug or alcohol usage checks, but only if the individual has a job where use of drugs could threaten the safety of others; and (iii) a criminal record affidavit for candidates and criminal records checks after the first interview.

## IMMIGRATION

The hiring of foreign citizens is subject to special rules:

a. Restrictions: The number of foreign employees cannot exceed 20 percent of a company's total employee headcount in Peru. In addition, the maximum aggregate salary for all foreign employees cannot exceed 30 percent of the Peruvian company's total payroll.

However, in limited cases (eg, when a manager is hired for a new company), employees may apply to be exempt from the above limits on hiring and salary.

In addition, the above restrictions limits on hiring and salary do not apply to some foreign citizens who are not considered "aliens" for employment purposes – for instance, if such foreign citizens (i) are married to a Peruvian; (ii) have Peruvian ascendants, descendants or siblings; (iii) have an immigrant visa; or (iv) are nationals of countries which have signed a treaty with Peru about employment reciprocity or dual nationality. In these specific cases, in addition to the above restrictions not applying, their contracts of employment do not have to be approved by the Labor Ministry (see requirement c. below).

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b. Written contract: Hiring foreign employees requires a written and fixed-term contract, which cannot exceed a 3-year period. If the parties agree, the contract may be extended for an equivalent period. The number of extensions depends on each individual

c. Labor Ministry approval and work permit: Employment contracts with foreign citizens must be submitted to and approved by the Labor Ministry. After such approval, foreign citizens are able to obtain a worker visa and are permitted to start working in Peru.

## HIRING OPTIONS

### Employment contracts

Indefinite, fixed-term or part-time.

### Independent contractor

Independent contractors may be engaged, subject to potential misclassification exposure.

To mitigate the misclassification risk, the services must be provided independently without direction or control from the hiring company.

The main characteristics of independent contractor relationships in Peru are as follows:

- Contractors are autonomous and independent in the provision of their services
- No requirement to comply with working hours
- Non-exclusive services (ie, contractors usually have several clients)
- Contractors receive compensation or a fee for their services (rather than a monthly salary, as employees do) and are not entitled to any employment benefits, and
- The arrangement is subject to the civil law (not employment law).

## Staffing and outsourcing services

It is permissible to engage workers through a third-party staffing agency. However, agency workers may be hired only for activities that are different from the company's core business. Moreover, the staffing agency must comply with certain legal requirements (eg, registration with the Labor Ministry). This arrangement is commonly used for janitorial and security services.

It is also permissible to engage workers through outsourcing arrangements with an outsourcing company, except if the services are related to the client's core business that includes permanent displacement of workers.

Workers assigned to perform services for a company are employed by third-party companies that provide outsourced business solutions or specialist consulting services on a contract (services) basis. The workers are managed, instructed and controlled solely by the outside third party, and such third party has its own financial, technical, material and human resources. The workers are subject exclusively to the orders and policies of the third-party company.

Both staffing and outsourcing arrangements have joint employer risks.

Consequences for non-compliance with the rules include the invalidation of the outsourcing scheme and the incorporation of the outsourced personnel onto the payroll of the client, as well as administrative penalties.

## EMPLOYMENT CONTRACTS & POLICIES

### Employment contracts

There are 2 main types of employment contracts: (i) indefinite and (ii) fixed-term:

1. Indefinite employment contract: There is no legal requirement to execute indefinite employment contracts in writing, but the recommended approach is to sign a written agreement. Under local law, every employment relationship is presumed to be permanent for an indefinite term, unless proven otherwise.
2. Fixed-term employment contract: Despite the presumption that every employment relationship is permanent for an indefinite term, employees may be hired by means of fixed-term contracts in the following cases: (i) for new activities or services, market necessities or where there is an increase in production or demand; (ii) temporary or force majeure cases (eg, natural disasters or replacement of employees who are out on leave for such reasons as maternity, sabbatical or vacation); (iii) seasonal services (eg, fishing); or (iv) specific services where the fixed-term arrangement is permitted by the local



law (eg, an audit of financial statements in a given year). Fixed-term employment contracts must be executed in writing. In some specific cases, fixed-term agreements may be extended for a maximum of 5 years.

It is also possible to hire an employee under a part-time employment contract, which may be indefinite or for a fixed term, if the employee works less than 24 hours per week. This contract must be registered with the Labor Ministry.

## Probationary periods

Generally, the maximum permitted duration of a probationary period is 3 months. The probationary period may be extended for up to 6 months for so-called “trusted personnel” (defined below) or when the employee must be trained first. Where an employee is “managerial personnel” (defined below), the probationary period may be extended for up to 1 year.

According to local law, “trusted personnel” means (i) any employee who reports directly to managers or (ii) employees who have access to industrial, commercial or professional secrets and confidential information. “Managerial personnel” means any employee who represents the employer in front of other employees and/or third parties or has managing and control functions.

Protection against arbitrary dismissal applies after the probationary period expires – meaning that companies may terminate the employment contract of a non-probationary employee only when having justified cause and after providing prior written notice pursuant to local law.

## Policies

Policies that are mandatory for all companies irrespective of the number of employees are:

- Policy on Prevention and Punishment of Sexual Harassment
- Policy about Health and Safety at Work and
- Policy about the structure of the job roles and salaries of the company, in order to avoid any salary discrimination between men and women.

For companies with 20 or more employees, employers must implement:

- Internal Regulations on Health and Safety at Work.

For companies with 20 or more female employees of childbearing age, employers must implement:

- Rules on breastfeeding room in workplace

For companies with more than 100 employees, employers must implement:

- Internal Labor Regulations, which must be approved by the Labor Administrative Authority.

## Third-party approval

Part-time employment contracts must be registered with the Labor Ministry.

An employment contract with a foreign citizen must also be approved by the Labor Ministry.

## LANGUAGE REQUIREMENTS

The official language is Spanish. Any employment-related document (eg, employment agreement or contract) must be in Spanish to be valid. If the employment-related document is in a foreign language, in case of a dispute, such document must be translated by an official accredited translator.

## WORKING TIME, TIME OFF WORK & MINIMUM WAGE

### Employees entitled to minimum employment rights

All. Part-time employees must receive the proportional part.

### Working hours

The employer has the right to set working hours. Employees are allowed to work a maximum of 8 hours per day and 48 hours per week. Some employees are legally exempt from these limits.

Employees who work continuously are entitled to take at least a 45-minute lunch break. This period is not part of the working hours, unless agreed otherwise.

Employees must have a day of weekly rest, usually on Sundays.

### Overtime

Any additional working hours over regular working time or hours over agreed hours are considered overtime. Overtime is paid at a rate of 1.25 for each of the first 2 hours and at 1.35 for each additional hour per day. Alternatively, the company and the employee may agree to compensate overtime work with rest time.

### Telework

A new telework law establishes the right to digital disconnection, economic compensation for providing personal means for teleworking (such as laptop, internet or electricity), the minimum content of the telework agreements and other important changes to the current rules on telework. This law applies to telework within Peruvian territory and abroad.

### Wages

Employees who work full-time are entitled to receive the minimum wage, which is currently PEN1025 per month (about USD270). For certain activities, the minimum salary is higher (eg, mining). If the employee works on night shifts (from 10:00pm to 6:00am), they should receive a salary increase equivalent to 35 percent of the minimum wage.

### Vacation



Employees working a minimum of 4 hours per day and who have accomplished a minimum number of days worked within the year – which depends on the duration of the working week – are entitled to 30 calendar days of vacation per full year of service. The number of days may be reduced in writing to a minimum of 15 calendar days, but the employer must compensate for the additional vacation days with an additional payment to the employee.

The employee may request in writing to split the 30 vacation days into 15 calendar days, which must be used in periods of 7 and 8 consecutive days; the remaining 15 calendar days may be used in periods of between 1 and 7 calendar days.

## Sick leave & pay

Employees are entitled to up to 20 days' sick leave per year fully compensated by the company if they have the proper medical certificate. After the 20th day, the Public Health Insurance (EsSalud) pays the employee a sickness allowance equal to the amount of the employee's salary.

## Maternity/parental leave & pay

Maternity leave: A female employee is entitled to 49 days paid leave prior to giving birth and 49 days of paid leave postpartum.

It is possible for the employee to postpone the leave prior to giving birth and use the accrued days postpartum. In such cases, the employee must notify the employer within 2 months before the expected birthdate and prove with a medical report that postponing the leave prior to giving birth will not prejudice the employee or the child.

Paternity leave: An employee who becomes a father is entitled to up to 10 consecutive working days of paid leave.

The 10-day period may start between the birthdate of the new child and the date when the mother and the child leave the hospital.

To enjoy this benefit, the employee must notify the employer within 15 days before the expected date of birth.

Adoption leave: The employee requesting the adoption is entitled to 30 calendar days' paid leave. To enjoy this benefit, the employee must notify the employer within 15 days before the expected date of the baby's arrival.

## Other leave/time off work

Employees may also be entitled to leave for other purposes depending on the circumstances, such as bereavement; to care for an immediate family member who is seriously/terminally ill or who has suffered a serious accident; for medical care and rehabilitation therapy for people with disabilities; to care for a patient with Alzheimer's disease or other dementias; to continue treatment for tuberculosis; to donate blood, solid organs and bone marrow; to complete military service; and to vote. Women may also be entitled to leave to undergo breast and cervical oncological preventive examinations and for breastfeeding.

## DISCRIMINATION & HARASSMENT

The Peruvian Constitution prohibits discrimination based on racial, sexual, political or religious grounds, or age or physical disability, among others.

The labor law forbids discrimination in recruitment.

Companies cannot dismiss based on discriminatory reasons. In such case, the dismissal is considered null, and the employee can sue for re-instatement.

During the employment relationship, if the company carries out discriminatory acts, this may be considered to be “hostility” against the employee. If the company continues with such discrimination, the employee may claim constructive dismissal due to discrimination.

Recently, local law has prohibited salary discrimination between men and women.

## WHISTLEBLOWING

National law provides protections for an individual who reports acts of corruption and penalizes reports made in bad faith.

## BENEFITS & PENSIONS

**Family allowance:** Employees who have children under 18 years old or older than 18 years old and younger than 24 years old who are attending college/university or other similar educational institutions, or who have children of legal age with a certified severe disability are entitled to an additional monthly allowance payment of 10 percent of the minimum wage.

This is a single monthly allowance payment, regardless of the number of children.

**Compensation for time of service:** Every May and November, employers must deposit a compensation for time of service (CTS) into a special banking account in the employee’s name for all employees who work at least 4 hours per day and have a month of effective service with the company. The amount is approximately 1 month’s salary per year, though it must be calculated on the basis of the ordinary salary and all the amounts regularly paid to the employee either in cash or in kind (eg, Family Allowance). This is intended to serve as an unemployment insurance scheme for employees.

**Legal bonuses:** Employees are entitled to a legal bonus twice a year, during the first 2 weeks of July and December, respectively. Each bonus is equal to 1 month’s salary. Employees who are not actively employees in July or December, but have worked at least 1 month in the respective period, are entitled to receive the legal bonus pro-rated to the number of months worked.

**Profit sharing:** Companies with more than 20 employees must distribute part of the profits earned during the respective year to their employees. The distribution percentage depends on the company’s activities: (i) 10 percent of profits for fishing, telecommunication and manufacturing companies; (ii) 8 percent for mining, commercial companies and restaurants; and (iii) 5 percent for companies that do not fall into the first 2 categories.

The distribution of profits among the employees is made depending upon their effective working days and in proportion to the salary of each employee. The sum awarded to any individual employee may not exceed the equivalent of 18 monthly salaries. Any excess is placed in a special governmental fund.

Pension system: There are 2 systems that an employee may choose from in order to obtain pension. One is a public system; the other is a private system.

Contributions to the public system are equivalent to 13 percent of an employee's salary. In the private system, the contribution is approximately 12 percent, but it varies depending on the pension fund, the month and the type of commission chosen by the employee.

The contribution is paid by the employee, and the employer must withhold the percentage from the employee's salary.

Public health insurance – EsSalud: The employer must pay to EsSalud a contribution of 9 percent of the salary to cover health benefits of each employee.

## DATA PRIVACY

During the employment relationship, companies collect employee personal data. The processing of personal data must be done in accordance with the guiding principles provided by the law.

According to the Peruvian Data Protection Law, consent and privacy notices must be obtained/given before the personal data is obtained/processed. Pursuant to the law, personal data may only be processed and/or transferred with prior consent. Such consent must be free, informed, express and unequivocal. However, a company does not need the express consent of the employee to obtain personal data if this information is necessary for the operation of the employment relationship, but it must comply with the duty of inform about the processing of personal data.

## RULES IN TRANSACTIONS/BUSINESS TRANSFERS

Any corporate reorganization, business purchase, downsizing or any similar matter:

- Is not a valid cause for individual termination and
- Should not affect the salary and conditions of the employees involved, unless there is prior written agreement with the employees.

In case of a merger, the change of employer occurs automatically due to the method of transfer, so employee consent is not needed. The employment continues with the surviving company on existing terms. If the surviving company wants to change the existing terms, it must obtain consent in writing from each employee with respect to these new terms.

## EMPLOYEE REPRESENTATION

Trade unions are prevalent in certain sectors (eg. manufacturing, mining and infrastructure). Unions are protected under the Peruvian Constitution, which recognizes the right of an employee to join unions, collective bargaining and strikes. Union leaders are specially protected against unfair dismissal.

Employees can directly affiliate with trade unions, federations (the union of 2 or more trade unions) and

confederations (the union of 2 or more federations) if the bylaws of those organizations allow it. There are 3 new types of trade unions: a union of a group of companies, a union of a production chain, and a union of subcontracting networks.

## TERMINATION

### Grounds

After the probationary period, employees are protected against arbitrary dismissal (ie, dismissal without legal cause or procedure), which means that companies may terminate the employee only with justified cause, after providing prior written notice pursuant to law.

Both employee misconduct – including serious misconduct – and the incapacity of the employee may be considered as a ground for termination. However, in practice, some causes of dismissal (eg, poor performance) are difficult to apply.

The following are considered acts of serious misconduct:

- Non-compliance with working obligations
- Use or delivery to third parties of confidential information belonging to the employer
- Unfair competition
- Repeated attendance at work under the influence of alcohol, drugs or narcotics
- Violence, serious lack of discipline, perjury or verbal or written statements made to the detriment of the employer
- Intentional damage to the facility, work, equipment and other property belonging to or in the possession of the employer
- Unjustified absence from work for more than 3 consecutive days, 5 days within a period of 30 days, or 15 days during a period of 180 calendar days, and
- Sexual harassment.

The following causes are related to an employee's incapacity:

- Decrease in performance either based on the capability of the employee or based on an average of their previous performance in similar conditions and
- Unjustified refusal to undergo a medical examination – mandatory or agreed – which is necessary for work, or to comply with medical treatment.

### Who is subject to termination laws?

Full-time employees. Part-time employees do not have protection against unfair dismissal. However, employers must still comply with the general requirements to terminate part-time employees.

## Restricted or prohibited terminations

Unfair dismissal is forbidden by law.

A dismissal will be null and the employee will be entitled to claim re-instatement if the dismissal is based on any of the following causes: pregnancy, maternity leave, breastfeeding, making a complaint against the employer, racial origin, sex, religion, political opinion or trade union membership.

Special protection against dismissal which was in place for pregnant employees and women who are breastfeeding (until 1 year after the birth of a child) has been extended to employees who are in their probationary period as well as part-time employees.

## Third-party approval for termination/termination documents

No requirements.

## Mass layoff rules

When a layoff is based on economic, operational or structural reasons, an employer must dismiss a minimum of 10 percent of its employees. In these cases, the employer must hold a period of consultation and negotiation with the union or in the absence of a union, with the affected employees. A mass layoff must also be approved by the Labor Administrative Authority.

Where closing operations in Peru, an employer must provide prior written notice by letter communicating the termination of employment to its employees and then to the Labor Administrative Authority.

## Notice

The company must provide prior written notice by letter communicating its intention to terminate the employee and in which the employer must describe the facts and any applicable misconduct that justifies the dismissal. Such notice must indicate the ground for the dismissal and provide the employee with at least 6 calendar days to reply, or 30 days if the cause is related to incapacity. After that notice period, whether or not the employee responds, the company may issue a termination letter.

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

Pay in lieu of notice is not permitted. Garden leave is permitted.

## Severance

There is no statutory severance entitlement, but an indemnity is payable in the event of an unfair dismissal (ie, where the company does not have a prescribed legal ground to dismiss employees). In the event of unfair dismissal, employees are entitled to receive a legal indemnity in the amount of:

- 1.5 times their monthly remuneration for each year of service, if the employee is on an indefinite employment contract. Periods of time less than 1 year must be paid proportionally.

- 1.5 times their monthly remuneration for each month remaining until the end of the fixed-term contract, if applicable.

Such indemnity may not exceed, in both cases, 12 monthly salaries.

## POST-TERMINATION RESTRAINTS

Subject to comments below, it is common in Peru for companies to include or negotiate non-compete, non-solicitation and non-poaching clauses to prevent employees from competing with the employer after termination. Further, post-termination confidentiality obligations are included in termination agreements.

### Non-competes

Post-termination non-compete obligations are not enforceable under Peruvian law. However, in practice, employers include them in termination agreements and/or employment agreements for a potential deterrent effect on employees. To ensure that the employee complies with the non-compete, some companies pay compensation after successful completion of the non-compete period.

### Customer non-solicits

Customer non-solicits are generally permissible. Peruvian law classifies as “sabotage” any actual or potential action which would, without cause, damage the business activity of another economic entity by means of interfering in the relationship with its employees, clients and other individuals, in order to induce the latter not to fulfill any obligation.

### Employee non-solicits

Employee non-solicits are generally permissible. As indicated in the previous paragraph, solicitation of employees amounts to “sabotage.”

## WAIVERS

Any executed agreement that reduces rights granted by the Constitution, 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.

Nonetheless, it is possible enter into a valid settlement agreement with a release. When entering into such agreements, the employee’s signature must be notarized by public notary.

## REMEDIES

### Discrimination

In case of a dismissal for discrimination, the employee is entitled to claim re-instatement to the company.

In the case of salary discrimination, the employee is entitled to sue for official confirmation of equality with their



coworker.

Please see the discrimination section.

## Unfair dismissal

In case of unfair dismissal, the employee may claim for re-instatement or for an indemnity. Employees who were classified as managers or “trusted personnel” since the commencement of their employment are not entitled to claim for re-instatement.

## Failure to inform and consult

Not applicable for terminations as there are no consultation obligations.

## CRIMINAL SANCTIONS

According to the Criminal Code, violation of employment laws and discrimination may trigger criminal sanctions in the following cases:

- Harassment, sexual harassment, sexual blackmail and the spreading of images, audiovisual or audio materials with sexual content
- Forced labor
- Forcing or preventing an employee from joining a union or
- Deliberate infringement of Health and Safety at Work regulations and endangering the lives, health or integrity of employees in a serious way.

## COVID-19 SPECIAL REGULATIONS

### Home office

The employer may instruct employees to work from home until December 2022. In case of employees at high risk of a COVID-19 infection, the employer must prioritize home office.

### Furlough

If the employer cannot maintain its workforce because its financial situation has been affected by the COVID-19 crisis and/or can't apply the home office, it is possible to furlough employees. The application must be approved by the Labor Administrative Authority. The furlough may last until April 5, 2021, at most.

### COVID-19 Health and Safety Plan

Peru is under lockdown measures as of March 16, 2020. The economic reactivation process started in May of 2020 and consists of 4 stages. If the employer's activities are allowed, according to such reactivation process, it is necessary to elaborate and register a COVID-19 Health and Safety Plan prior the restarting of operations after quarantine.

## Vaccination

Employees who perform work activities in person must prove that they have been fully vaccinated against COVID-19. In case of non-compliance, the employer can require the employee to work from home. If this is not possible, employers may furlough employees unless agreed otherwise.

An employee who vaccinates against COVID-19 is entitled to up to 4 hours days of paid leave. To enjoy this benefit, the employee must notify the employer within 48 hours before the day of vaccination.

As of January 31, 2022, individuals 40 and older must demonstrate that they have received their third vaccine dose against COVID-19 in order to enter to closed places, such as offices, shops, restaurants, supermarkets and clubs, among others.

## KEY CONTACTS

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