

CHAPTER XI: LABOR LEGISLATION

1. Workday

Daytime workday accounts for 48 hours per week and eight hours per day. Maximum night time workday accounts for 7 hours per day and 42 hours per week. Combined workday accounts for 7 and ½ hours per day and 45 hours per week. Seven hour of night time and 7 and ½ hours of combined workday are remunerated as eight hours of daytime workday; work exceeding these limits shall be remunerated with a 25% extra charge over the regular salary when performed during day time, with 50% extra charge when performed during night time or when performed as an extension of a combined workday initiated during day time, with a 75% extra charge when performed when the overtime is an extension of the night time workday or the combined workday initiated during the night time.

For the purposes of the workday, day time shall go from 06:00 a.m. to 06:00 p.m., and night time from 06:00 p.m. to 06:00 a.m. Breaks for lunch during workday shall not be inferior to ½ hour or superior to 2 hours. Night time may be proportionally divided along the workday, provided it does not exceed it.

Mandatory weekly day off shall be granted on Sundays preferably. Working on Sundays or on any other mandatory weekly day off shall be remunerated as with an extra charge of 50% over the regular workday salary, without detriment to the workers right to enjoy another day off. Work on compensation day off shall be remunerated with an extra charge of 50% without right to enjoy another day off to replace the one worked.

Official holidays and mourning days are the following:

- January 1st and 9th
- Mardi Grass
- Holy Friday
- May 1st (Labor Day)
- November 3rd, 4th, 10th and 28th
- December 8th and 25th
- New Presidents Inauguration Day
- Other days declared official holiday or mourning day by the Executive Branch.

Work on national holidays and mourning days shall be remunerated with a 150% extra charge over the regular workday salary, without detriment for the right of the workers to be granted another compensation day off on any other day of the week. Work on compensation day off shall be remunerated with an extra charge of 50% without right to enjoy an additional day off to replace the worked one.

2. Contributions

Concerning social security, the employer shall contribute with 10,75% of the worker salary, 1,5% of *Seguro Educativo* (Education Tax), and for *Riesgos Profesionales* or Occupational Risks, the employer shall pay according to a rate going from 0,98% to 5,67%, according to proportion of the risks entail by the work, and the worker shall contribute 7,5% of the salary for social security and 1,25% for Education tax These contributions are mandatory..

3. Benefits

Under Panamanian legislation, upon termination of the working relation, workers shall be paid vacation periods, representing 30 days for each period of 11 months worked or, proportionally, one day for each period of eleven days worked, in the event that the working relation were terminated before the corresponding eleven months.

There is also the **Décimo Tercer Mes**, or 13th Month, that obviously refers to an additional month with respect to the twelve months of a year. This benefit shall be paid in three parts: on April 15th, on August 15th and on December 15th. In the event that workers do not complete the indicated periods, payment shall be made proportionally, by dividing the sums earned by 12.

If the working relation is not established for a defined period of time, or **tiempo indefinido**, in addition to what is said hereinbefore, an obligatory seniority premium corresponding to a week salary for each year worked shall be paid; in the event that a worker does not complete a year, payment shall be made proportionally, by multiplying the sums earned for 1.92%.

4. Indemnities

If a worker is fired without a justified cause, the worker shall be entitled to an indemnity equivalent to 3.4 weeks of salary per year worked during the first ten years, or proportionally if the worker has not completed the said period, by multiplying the sums earned by 6,54%.

If after termination of the working relation without a justified cause a worker demands reinstatement with payment of unpaid or arrears salaries resulting from firing, our law prescribes that payment of these salaries shall not exceed three months, if the working relation was established after 1995, and of 5 month if established before 1995. After reinstatement ordered by a court of law, the employer has option to reinstate or not the worker, but if the employer chooses not to reinstate the worker the employer shall make the corresponding indemnity payment, plus an additional charge of 50% over the indemnity sum if the working relations was established before 1995, and of 25% if established before 1995, if the employer's contributions to the Severance Fund are not updated.

5. Termination of Working Relation

When there is no cause for dismissal, Panamanian legislation set forth specific causes to discontinue the working relation, as detailed hereinafter.

- By consent of the parties, provided such consent is expressed in a written agreement and does not involve relinquishment of rights.
- By expiration of contractual term.
- By completion of works that substantiated the contract.
- Death of the worker.
- By death of the employer when it entails the termination of the contract as unavoidable consequence.
- By reason of the extension of a cause for suspension of contracts not exceeding the maximum authorized by the Code for the respective cause, upon petition of the worker.
- By dismissal on the basis of just cause, or resignation of the worker.

- By unilateral decision of the employer, observing the formalities and limitations referred to in this Chapter.

The Labor Code, as well, contemplates three categories of justified causes that may be alleged by the employer to terminate the working relation. These categories are as follows:

a) Of Disciplinary Nature

- Deception by worker, submission of false documents regarding certificates attesting to qualities, aptitudes or faculties that motivated the contract of its modification. The right of the employer to terminate the contract for this cause shall expire after a month from the date falsehood of documents and certificates was proven. When authorization to practice a profession is involved, this term shall not exceed a year, as of the date of the beginning of the working relation.
- Unprovoked violence, threatening attitudes or offensive remarks of the worker against the employer, his/her family or members of the management personnel or fellow workers.
- If, outside the working place, the worker incurs in any of the conducts described in section making impossible for the working relation to continue.
- Disclosure by the worker of technical, commercial or manufacturing secrets without the authorization of the employer, and making publicly known administrative matters of reserved nature which divulgation may be harmful for the employer.
- Serious honesty and integrity infringements by the Worker, or commission of crimes against property directly harmful for the employer.
- Intentional material damage inflicted by the worker while discharging his/her duties, or by reason of said duties, to machinery, tools, raw materials, products, buildings and others elements directly related with the work.
- Infliction of the material damages contemplated in Section vi) with liability by the worker, provided said damages were grave in nature and the sole responsibility of the worker.
- Imprudence and inexcusable negligence of the worker, compromising the safety of the working place and of the people present.
- Evident and repeated refusal of the worker to adopt prevention measures and indicated proceedings to avoid professional hazards.
- Unjustified and harmful for the employer disobedience of the worker with respect to orders issued by the employer or his/her representatives, provided said orders were presented in a clear manner and were directly related with the execution of the work contract.
- Absenteeism of worker without due leave or without justified cause on two Mondays in one month, six Mondays in a year or three consecutive or alternate days within a month. For the purpose of this section, Monday shall be construed as the first working day after a national holiday or mourning day.
- Recidivism of worker in abandoning his/her work, which include sudden and unjustified leaving of the working premises during working hours without

authorization of the employer or the employer's representative, or the repeated refusal to work without justified cause.

- Recidivism of worker, within the term of one year, violating prohibitions set forth in numerals 3, 4 and 5 of Article 127 (of the Labor Code).
- Actions or omissions of the confidential employee, during or after service hours, entailing the loss of the confidence of the employer.
- Sexual harassment, immoral or criminal behavior during service.
- Worker's notorious lack of efficiency, qualified according to specific technical and professional evaluation systems and regulations, previously approved by the Ministry of Labor and Labor Development, or approved within the frame of a collective bargaining contract.

b) Of Non Imputable Nature

- Originated lack of capacity of manifested inefficiency of the worker, making impossible to fulfill the essential obligations of the contract. This cause may be invoked by the employer only within the term of six months as of the initial date of the worker services.
- Executorial sentence imposing the worker with a reclusion or prison term penalty, or if worker is under arrest or under preventive prison and does not comply with notification as set forth in ordinal T of Article 199 or during the course of a year as of detention date.
- Worker's recourse to retirement or to pension for permanent and definitive disability, prior verification that the worker will receive the pension during the following month.
- Mental or physical disability of the worker, duly documented, or the loss of the certification required by the law to practice the profession, rendering impossible fulfillment of the essential obligations of the contract.
- Expiration of the term of a year, as of the date of suspension of the contract by reason of illness or non occupational accident of the worker.
- Disability of the employer, entailing as unavoidable consequence the termination of the contract.
- Act of God or a *Force Majeure* circumstance entailing the necessary immediate and definitive suspension of the employer's activities.

c). Of Economical Nature

- Insolvency proceeding or bankruptcy of employer.
- Closing of the business or definitive reduction of the (number of) employees by reason of notorious unaffordable cost of the exploitation (or to) the exhaustion of raw material object of the extraction activity.
- Definitive suspension of works inherent to the contract or proven diminution of the activities of the employer due to serious economical crisis, partially unaffordable operation because of the reduction of production resulting from innovations affecting processes and manufacturing equipments, or revocation or caducity of administrative concession, cancellation of purchasing orders or requisitions, or reduction of the productive activity of the company concerning requisitions,

purchasing orders, sales or other analog causes, duly verified by competent authority.

The following rules apply to dismissals for economical reasons:

- Process shall begin with those works of lesser seniority on respective categories.
- After application of the rule hereinbefore, Panamanian workers shall be preferred to foreigners, organized workers to non organized and more efficient worker to less efficient ones.
- Pregnant women, even if not covered, after compliance with legal formalities.
- Under equal circumstances, workers protected by Union Special Status shall be preferred to others.

6. Contracts for a Definite Term

Our legislation includes Contracts with definite terms, which are the rule, and contracts with non definite terms, which are the exception. Contracts with definite term may be executed for a year and, at the termination of the relation, the company is only obligated to pay vacations and 13th Month, but if the relation is terminated before the term of the contract without a justified cause, the employer is obliged to pay to the worker in addition to vacations and 13th Month, the remaining time of the contract. At the expiration date of the contract, if the worker is still working, it shall be considered a working relation without definite time, if the company has been operating for more than two (2) years.

7. Probationary Period

When rendering a service demands a certain skill or special capacity, a clause setting forth the probationary period of three months shall be valid, provided it is so consigned in writing in the work contract. During said period, either party may terminate the working relation free from liabilities.

8. Maternity Special Statute

Pregnant workers shall enjoy a compulsory maternity leave, remunerated as a regular working time, covering six weeks before childbirth and eight weeks after childbirth. Total maternity leave shall not be inferior to fourteen weeks, but if childbirth was delayed, the worker shall be entitled, after actual childbirth, to a paid leave for the following eight weeks.

It is mandatory for the employer to pay the difference between the maternity subsidy granted by “**Caja de Seguro Social**” and the retribution that, according to the relevant provision, correspond to pregnant workers.

The employer shall assume the obligations referred to in this article when the “**Caja de Seguro Social**”, for whatever reason, was relieved from obligations concerning maternity subsidy.

During the leave period referred to in this section, employer shall not introduce, adopt nor communicate to the worker any measure, penalty or action as provided by the Labor Code, or otherwise face voidance of the said measure, penalty, action or communication. To these effects, expiration and prescription terms favorable to employers are suspended for the duration of the maternity leave period.

Worker returning to work from maternity leave shall not be dismissed upon not justified causes during the one year following period (Maternity Special Statute, or *Fuero Maternal*)

9. Unemployment Fund

Within definite term contracts employers shall constitute an unemployment fund to pay seniority premiums and indemnity for dismissal without justified cause or justified resignation after termination of the working relation.

To establish the fund, the employer shall pay quarterly the portion corresponding to the seniority premium and the 5% of the monthly portion for indemnity under the assumption that the working relation shall be terminated upon dismissal without justified cause or upon justified resignation.

Interest generated by allocations in view of the seniority premium and indemnities are owned and shall be consigned to the employer.

Quarterly allocations shall be deposited, by means of trusts, in private institutions authorized pursuant to Law 10 of 1993 for the administration of the retirement and pension complementary funds. Said institutions shall not be subsidiaries or affiliates of the employer.

Contributions of the employers to the unemployment fund are deductible expenses with respect to income tax regime. In case the employer retires said contributions from the fund, the employer shall comply with relevant income taxes thereof.

Sums of money consigned to the unemployment fund, as well as the interests thereof shall not be seized by third parties, and it is understood that only workers may institute actions in order to collect seniority premiums and indemnities they are entitled to.

The administration agency hired by the employer is obliged to handle to workers quarterly, and individually, a report on the sums consigned by the employer to guarantee the obligation.

During the working relation, workers may appropriate the sums accrued on their behalf for the purposes of seniority and indemnity as collaterals for real estate purchasing or housing, after documentation of the issue.

Upon termination of the working relation, and regardless of the cause for termination, workers shall have the right to receive the assignments made by the employer for seniority premium. In the event of death of the workers, dispositions of the Labor Code shall apply.

Assignations of the employer for indemnity purposes shall be received by the workers under the following circumstances:

- Termination of the working relation by dismissal without justified cause, after pronouncement of the competent authority, and
- Resignation of the worker with justified cause, after pronouncement of competent authority.

10. Collective Bargaining Agreement

Panamanian Labor legislation recognizes and regulates collective bargaining agreements pursuant to international general guidelines. There is, however, an exception in Panama: Collective Bargaining agreements do not apply during the first two years of operation of a new company.

11. Social Organizations

The Constitution and the pertinent laws of the Republic of Panama do promote social organization of the protagonists of economic activities, both employers and workers or employees. Concerning workers unions, they may be like guilds organizations, that is, formed by members of the same profession, trade or special skill; of companies, or formed by members of different professions, trades or special skills working for the same company; of industries, formed by members of different professions, trades or skills working for one or more companies engaged in the same type of activity; combined, when formed by members of different professions, trades or skills working in unconnected companies and that may be organized only when in a district, province or region, the number of workers is inferior to 40.

Employer's organizations may be organized with ten members, even if engaged in totally different activities. Workers organizations may be organized with a minimum of 40 members.