

4. Labor Framework

Labor law in Colombia is regulated by the Political Constitution of 1991, by international treaties and agreements signed by Colombia and by the Labor Code.

Labor law is divided into two areas: individual labor law, that regulates the relationships between the employer and his [individual] employees, and collective labor law, that regulates the relationship between the employer and his employees when united in associations, whether unions or otherwise.

4.1 General Features

The “labor contract” constitutes the agreement reached between an employee and his employer by which the employee personally provides certain services, under the continuous subordination of the employer in exchange for a compensation that is generally called salary.

4.2 Types of Labor Contracts

Labor Contracts can be classified in different ways. Depending on their duration they are classified in the following manner:

- a. **Fixed term contract:** Its duration cannot be more than three (3) years. However, the parties may extend it indefinitely.
- b. **Contract for the duration of a work or contracted job:** It has a duration equal to the duration of an assigned task.
- c. **Occasional or temporary contract:** It has a duration no greater than one (1) month and it refers to activities different from the normal activities of the employer.
- d. **Indefinite term contract:** A term is not specified and its duration is not determined by the task or the nature of the job contracted, nor does it refer to an occasional or temporary job.

Contracts can also be classified as oral or written. The following types of contract must always be in writing:

- a. Fixed term contract, its extensions and the advanced termination notice.
- b. Contracts signed with foreign nationals not residents in the country.
- c. Contracts through which ten (10) or more employees are moved to render their services out of the country (collective hiring).

Similarly, the following agreements or covenants between employee and employer must be in writing:

- a. **Trial period:** Term corresponding to the initial stage of the work contract with the object of allowing the employer to evaluate the abilities of the employee and allowing the employee to evaluate the convenience of the work conditions. This period must not exceed two (2) months.
- b. **Lump-Sum Salary:** It is a form of compensating the employee, consisting in the payment of a lump sum that, in addition to compensating ordinary work, covers in advance the value of the benefits, surcharges, obligations and in general any other items that are by agreement are included as compensation. When employees wish to accept this type of salary, the decision must be set forth in writing; otherwise, the agreed salary may be considered as ordinary. The amount of contributions for pension, health, worker’s compensation and family subsidy are calculated based on 70% of the monthly salary.
- c. **Exclusions:** Exclusions are agreements between the parties to exclude certain extra-legal assistance or benefits from the base salary that affect the payment of severance benefits and payroll taxes [“payroll-based contributions”].

4.3 Apprenticeship Contract

The apprenticeship contract is a special form of contracting in Labor Law, by which an individual receives theoretical education in an authorized educational facility under the auspices of a sponsoring company that supplies the means so he can receive systematic and complete professional training.

The apprenticeship contract does not imply subordination and is established for a period no greater than two (2) years and must be in writing. The apprentice will receive a support payment that is not to be considered salary, from the sponsoring company.

4.4 Working Hours

Ordinary working hours cover a maximum of 48 hours per week that can be distributed from Monday to Friday or from Monday to Saturday. Daytime working hours extend for the period between 6:00 a.m. and 10:00 p.m.

4.5 Flexible Working Hours

The worker and employer may agree on the organization of successive work shifts, every day of the week, that do not exceed 6 hours per day and thirty-six (36) hours per week, without payment of a surcharge for work at night, on Sundays or holidays.

Similarly they may agree on a flexible workday, so that the forty-eight (48) weekly hours may be distributed in a maximum of six (6) days, where the number of daily working hours may go from four (4) to ten (10), without payment of the overtime surcharge, as long as these do not exceed forty-eight (48) hours per week, and the work is done on daytime hours.

4.6 Payment Derived from the Labor Relationship

4.6.1 Salary

Salary is the direct compensation received by the employee in exchange for the personal rendering of his services in favor of the employer.

4.6.1.1 Types of Salary

4.6.1.1.1 Ordinary wages

Is the compensation that pays for ordinary work. At the end of each year, the Government establishes the current minimum monthly legal wage or SMMLV (referred to as "SMMLV" throughout this document). For year 2009, the SMMLV is Col\$496,900 (approximately US\$199, taking Col\$2,500 to the dollar as reference exchange rate).

4.6.1.1.2 Lump-sum salary

It is the salary that in addition to pay for ordinary work, compensates in advance for the value of labor benefits, surcharges and benefits such as those corresponding to nighttime, overtime, Sunday and holiday work, to the legal and extralegal bonuses, severance and its interest, subsidies and supplies in kind and in general those included in the agreement, except vacations. Lump-sum salary must be established in writing and in no case can it be lower than thirteen (13) SMMLV with a value of Col\$6,459,700 (approximately US\$2,584, taking Col \$2,500 to the dollar as reference rate of exchange).

4.6.2 Labor Benefits

Every employer is required to pay his employees that earn ordinary wages, the following labor benefits:

Concept	Payment period	Description
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Severance Pay	Annual	One monthly salary for each year of service or proportionately for any fraction thereof, which must be deposited in a severance fund on February 14 of the following year or paid directly to the employee at the termination of the contract.
Interest on severance	Annual	12% of the annual severance amount or proportionately for a fraction thereof.
Service bonus	Every six months	Fifteen (15) days of wages for each semester worked or proportionately for fraction thereof payable in June and in December.
Transportation assistance	Monthly	Col\$59,300 for 2009 (approx. US\$ 24 using Col\$2,500 as reference exchange rate), payable to all employees who earn up to two (2) SMMLV.
Work shoes and clothing	Every four months	Payable to employees who earn up to two (2) SMMLV.

4.6.3 Compulsory Rest Periods

4.6.3.1 Paid rest on sundays and holidays

This payment is included in the monthly amount to be paid as wages. If the employee works on Sunday occasionally, he must receive the salary with a surcharge of 75% of the hourly rate; if he does it habitually, he must receive one additional paid rest day per week.

4.6.3.2 Annual paid vacations

The employees have the right to enjoy fifteen (15) business days of paid vacation for each year of work. As a minimum, the employee must enjoy six (6) vacation days for each year of service. The remaining days may be accumulated for up to two (2) years, but if they perform their work at a place different from the residence of their families, they can be accumulated for up to four (4) years.

4.6.4 Indemnification

Indemnifications are payments derived from the failure to comply on the part of the employer of his legal or contractual obligations, or for the lack of compliance with the obligations that the labor law imposes on him. The most common indemnifications are:

4.6.4.1 Indemnification for the unilateral termination of contract without just cause

- a. For fixed term contracts, the indemnification is an amount equivalent to the time remaining of the agreed term.
- b. For contracts for the duration of a work or contracted job, the indemnification is equivalent to the time remaining for the completion of the work or job, with a minimum of fifteen (15) days.
- c. For indefinite term contracts, the compensation is calculated as follows:
 - a) For employees earning a salary less than ten (10) SMMLV:
 - If the employee has less than one (1) year of continuous service, he must be paid thirty (30) days of salary.
 - If the employee has one (1) or more years of continuous service, he will be paid twenty (20) days of salary for each of the years subsequent to the first one and proportionately for any fraction thereof.
 - b) For employees earning a salary equal to or higher than ten (10) SMMLV
 - If the employee has less than one (1) year of continuous service, he will be paid twenty (20) days of salary.

- If the employee has one (1) or more years of continuous service, he will be paid fifteen (15) days of salary, in addition to the twenty (20) basic days, for each of the years subsequent to the first and proportionately for any fraction thereof.

4.6.4.2 Indemnification for lack of payment of salary and benefits

In case that the employer, at the termination of the labor contract does not pay the employee the sums owed for salary or additional benefits in due time and form, the employee will have the right to receive as indemnification for such delay, one (1) day of salary for each day of failure to comply, during the first 24 months.

4.6.5 Contributions to the Social Security System

Obligation	Payment period	Percentage
Contribution to the General Pensions System. Maximum contribution base is 25 SMMLV with a value of Col\$12,422,500 (Approx. US\$5,402, using Col\$2,300 to the dollar as reference rate of exchange).	Monthly	16% of employee's monthly salary, of which the employer pays 12% and the employee 4%. Employees who earn more than 4 SMMLV must pay an additional one (1%) percent, with destination to the solidarity fund. Employees earning 16 SMMLV or more, will have an additional contribution over their contribution base income, as follows: From 16 to 17 SMMLV 0.2% From 17 to 18 SMMLV 0.4% From 18 to 19 SMMLV 0.6% From 19 to 20 SMMLV 0.8% Foreigners, who contribute to the Pension System of their countries of origin, will not have the obligation of contributing to the Pension System in Colombia.
Contribution to Health Social Security System. Maximum contribution base is 25 SMMLV.	Monthly	12.5% of employee's monthly salary of which the employer pays 8.5% and the employee 4%
Contribution to Professional Risk System. Maximum contribution base is 20 SMMLV.	Monthly	Rate varies between 0.348% and 8.7% depending on level of risk of the company. The total amount is paid by the employer.

Colombia has signed bilateral social security agreements with Chile, Argentina and Spain. The intent of these agreements is to guarantee that citizens of the contracting countries can validate the time they have contributed to the pension system in any of the two countries for the purpose of recognizing the pensions for retirement, disability, or to survivors, under the conditions and with the characteristics of the legislation of the country of residence of the employee at the moment that he requests the benefit.

4.6.6 Payroll Tax (“Payroll-based Contributions”)

Payroll taxes (*“aportes parafiscales”*) are the payments every employer who hires more than one employee must make to the Colombian Family Welfare Institute (“ICBF”) and to the Family Compensation Funds.

According to law, contributions to the ICBF are 3% of the monthly payroll and contributions to National Apprenticeship Service -SENA- and to Family Compensation funds are 6% of the payroll (2% and 4% respectively).

4.6.7 Maternity Leave

Each pregnant employee has the right to a twelve (12) week leave, which may begin two (2) weeks before the date expected for childbirth. This leave is paid by the health-care Social Security System. No employee can be fired by reason of pregnancy or breastfeeding, except if there is a just cause previously qualified by a government work inspector.

It is prohibited to request a pregnancy test to candidates for employment.

4.6.8 Paternity Leave

The husband or permanent companion will have the right to four (4) working days paid leave for paternity, when only the father contributes to the Social Security System and to eight (8) working days paid license when both the father and the mother are contributors. In both cases, the husband or permanent companion must have contributed more than one hundred (100) continuous weeks to the Social Security System. This license is paid for by the health-care Social Security System.

4.6.9 Bereavement Leave

In case of death of the spouse or permanent companion, or of a family member up to second degree of blood kinship, first degree of affinity and first degree of adoption-based kinship, the employee will have the right to a paid bereavement leave of five (5) working days whatever the type of contract or labor relationship.

4.7 Regulations

Employers have the obligation of issuing the following regulations:

4.7.1 Workplace Regulations

Any company that employs more than five (5) permanent employees in commercial companies, or more than ten (10) in industrial companies, or more than twenty (20) in agricultural, livestock or forestry companies, is in the obligation of adopting workplace regulations [employee manual].

4.7.2 Workplace Safety and Health Regulations

Every company that employs ten (10) or more permanent employees must prepare a special Workplace Safety and Health Program.

4.8 Labor Harassment

Law 1010 of January 23, 2006, defines, prevents, corrects and punishes all forms of aggression, mistreatment and in general any insult to human dignity practiced in labor relations.

This law requires employers to modify the internal work regulations of companies in order to establish preventive mechanisms for labor harassment behaviors and an internal, confidential, conciliatory and effective procedure in order to overcome any such conduct that may occur at the workplace.

4.9 Foreign Workers

Foreign workers have the same rights and the same obligations as Colombian workers. However, when a foreign person enters into a labor contract in Colombia, both the employer and the employee must meet certain additional obligations that they must comply with, originating from the administrative procedures for the admission and control of foreigners during their stay in the country.

Companies having more than ten (10) employees in their payroll cannot hire more than 10% of foreign employees, as ordinary employees, nor more than 20% as management and confidence employees. Only in special cases and for certain industries can these percentages be higher.

4.10 Collective Rights

Collective law is in charge of regulating relationships between the employer and union organizations, collective contracting and the defense of common interests, both of employers as well as of employees, during the course of a collective work conflict. Its purpose is to develop the right of union association and the right to collective contracting and bargaining, as well as to establishing the mechanisms to guarantee the right to unionize and to go on strike.

4.10.1 Right to Unionize

Colombian employees have the right to unionize as an exercise of common labor guarantees. This constitutional right seeks to protect the creation and development of labor unions, as well as guarantee the exercise on the part of the employees of the defense of their labor and union interests.

4.10.2 Union

It is an organization of employees lawfully constituted for obtaining, improving and consolidating common rights with their employers. It is also the association of employees aimed at the defense of the individual and collective interests of its members. Unions are classified according to law, as follows:

4.10.2.1 Company union

Constituted by individuals of various professions who render their services to the same company.

4.10.2.2 Industry union

Constituted by individuals who render their services to different companies belonging to the same economic activity.

4.10.2.3 Trade union

Constituted by individuals who belong to the same trade.

4.10.3 Collective Bargaining Agreement

Is the agreement reached between one or several employers or employer associations, on one part and one or several unions or worker's federations, on the other part, to set the conditions that will regulate work contracts for their duration.

4.10.4 Collective Agreement

Is the agreement made between the employer, on one hand, and the non-unionized employees, on the other, to set certain conditions that will rule their labor relationship.

4.10.5 Union Contract

Is the contract made between a union and one or several employees, or several worker's unions with several employees, for the rendering of services or for the execution of a job.

4.10.6 Collective bargaining

A concerted action between employers and employees to discuss the requests contained in a list of petitions tending to establish new and/or better work and employment conditions.

4.10.7 Strike

A strike is defined as the collective, temporary and peaceful suspension of work, carried out by the employees in a company or establishment, with certain economic and professional interests proposed to their employers, after compliance with certain requisite procedures. Its exercise is only lawful and possible within the collective bargaining

process as an option to employees, provided that they work for an employer in the private sector who does not carry out activities classified by law as Public Services.