

Employment & Labour Law

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The following paper provides a brief analysis of labour legislation in the Dominican Republic (A), a summary of the most relevant judicial decisions in employment law issued over the last 12 months (B), and an overview of the future of labour legislation in the Dominican Republic with suggestions concerning the impending reforms (C). This document is only intended as a synopsis of the topics addressed herein and not as a comprehensive study of it.

(A) Analysis of Dominican labour legislation

Law No. 16-92, enacted on May 29, 1992, accompanied by Decree No. 258-93 (the “Labour Code”), regulates all private labour relationships in the Dominican Republic. The Labour Code provides comprehensive protection for workers, with provisions that cannot be modified by a written employment contract unless it grants workers further favourable conditions than the ones set forth by the law. The Labour Code provides the conditions in which work must be performed, suspended and terminated. The methods for termination of employment contracts provide the most heated debates in our courtrooms, as they constitute the biggest cause of litigation.

The Dominican Republic is a member of the International Labour Organization, and in such capacity has assumed the agreements and recommendations proposed by it, all of which are intended to protect workers. Moreover, the Constitution of the Dominican Republic protects the people’s right to benefit from labour protection and the right to strike. As a consequence, our labour legislation is directed towards protecting workers, as they are presumed to be the weaker party in all employment contracts.

Under the above premises labour relationships in the Dominican Republic are governed by, among others, the principles of (1) trust between the parties, (2) equality and no-discrimination, (3) recognition of the right to form trade unions and to strike, and (4) irrenunciability of the minimum prerogatives of workers.

i. Employment contract

The Labour Code does not demand express formalities for employment contracts. Hence, employment contracts are enforceable and presumed to exist in every such case when a person – that cannot be a company – provides any form of service under the direction and supervision of another – either a natural person or a company – in exchange for compensation. As a consequence, the main elements of employment contracts are: (1) a service rendered by the worker; (2) a direct or indirect supervision by the beneficiary of the service – the employer; and (3) a salary payable by the employer. Henceforth, a potential agreement between the employer and the worker will be that it is applied in practice above what may be in writing. Any conventional provision that limits the rights of workers may be disregarded by a court of law.

Nonetheless, other relationships are not regulated by the Labour Code, rather by civil law or other special laws, including those of the free professionals who exercise their profession independently, commission agents and brokers, business agents and representatives, lessees and property tenants, some public workers and officials, and members of the Armed Forces and the National Police.

The Labour Code sets forth three types of employment contracts: (1) contracts for a non-specified

term, which are the natural employment contracts; (2) contracts for a specific term; and (3) contracts for a specific activity. The latter two, in principle, do not provide severance payment in case of wrongful termination.

Whenever one or more companies – even though each of them has an individual legal identity – are under the direction, control or management of others, and are related to constitute an economic unit, and when fraudulent representation has occurred, such companies are jointly obligated towards their workers. Also, if a worker is transferred to another company, the new employer is jointly liable with the older one, so as to accomplish all the rights and obligations arising from the employment contract, including the rights obtained prior to the effective date of the replacement up to the statutory prescription of those rights.

ii. Equal treatment between foreigners and national workers

Foreign employers and workers receive the same treatment as Dominicans, as their migratory status cannot be grounds for discrimination. Nevertheless, under our migratory legislation, employers who hire illegal immigrants can face a penalty. Additionally, the employer should be unable to fulfill his obligation to contribute to the Dominican Social Security System on behalf of workers with immigration difficulties, since the system demands the workers' correct identification through a legally obtained identity card.

Labour legislation is of territorial application, which means that when work is executed in the Dominican Republic – even for a period of time – the labour relationship may be governed by the Labour Code. When a conflict of law arises, the applicable law is the one more favourable to the worker. With some exceptions, at least 80% of an entity's workforce must be Dominican and no less than 80% of the payroll must correspond to wages earned by Dominicans.

iii. Regulations and obligations

The employer must pay a salary to the worker at least monthly, which cannot be below the minimum wage established by the Ministry of Labour through the National Salary Committee. The maximum amount of work hours per week is 44 hours and it cannot exceed eight or ten hours a day, depending on the workers' seniority. The salary for night shifts and extraordinary hours must be paid with an enhancement. In addition, the employer must grant the worker 36 hours of uninterrupted weekly rest, a vacation period of 14 working days per year, and specific leaves of absence because of marriage, death of a family member or birth of a child.

Each year, on or before December 20th, the employer must pay a "Christmas salary" equal to one-twelfth of the total regular salary earned during the year. Moreover, employers must grant participation equivalent to ten per cent of the annual net profits or dividends to all its workers contracted for an indefinite time; such dividends may not exceed 45 to 60 days of salary for each worker. The employer must make contributions to the Dominican Social Security System for family health insurance, old age insurance, incapacity and survival, and insurance against labour risks. In like manner, the employer must contribute with regular payments to the pension funds to which the worker belongs.

iv. Maternity protection

The Labour Code forbids discrimination against a pregnant worker and thus forces the employer to grant paid maternity leave during the six weeks that precede the probable birth date and six weeks that follow. It also prohibits the employer to terminate the employment contract during this period, with the exception of the worker's fault, with prior authorisation from the Ministry of Labour. If this rule is ignored, the employer would be asked to pay severance, acquired rights and the equivalent of five months' salary as a compensation for the damages received by the worker.

v. Suspension and termination

An employment contract may be suspended by virtue of one or several of the causes expressly provided by the Labour Code, including mutual agreement between the parties; detention, arrest or preventive custody of the worker; absence or insufficiency of raw material, provided that it is not the fault of the employer; the unprofitability of the company's operation; a contagious disease or disability of the worker, or other facts that may impede to carry out his job. In some of the causes expressed herein the suspension must be previously authorised by the Ministry of Labour. During this time the

worker is freed from providing service and the employer from paying any compensation, except if both parties have agreed otherwise.

In case of accident or sickness the worker shall receive medical attention and indemnities pursuant to the laws on social security. However, when the worker is not insured due to the fault of the employer, the latter is responsible for paying his medical expenses.

Also, employment contracts can be terminated as a result of mutual agreement between the employer and the worker or because of the employer's or the worker's decision without specifying a cause, because of the worker's fault or because of the worker's resignation, based on a specific violation of the employer's obligations. In such cases the employer may be forced to pay severance and acquired rights in benefit of the worker.

Severance payments vary depending on the duration of the employment contract and must be paid within ten days of the termination. If not, the employer may be entitled to pay a penalty of one day of salary for every day of delay. In addition to severance, if the contract ends because of the permanent incapacity or death of the worker, the employer shall pay the worker or his/her heirs an economic assistance as indicated in the Labour Code.

vi. Procedure before labour courts

The procedure to pursue the recognition of the rights granted by the Labour Code is governed by the *in dubio pro operario* principle, which means that in case any doubts arise in the application of a given right or obligation, judges from labour courts should decide in favour of the worker. To demonstrate a fact, parties may use all means of proof and counsel representation is not demanded. However, it is highly recommended that parties are indeed represented by counsel specialised in labour matters.

Furthermore, the procedure is exempted from taxes, and judgments from labour courts are enforceable after the third day of being notified, notwithstanding appeal. To stay the enforcement of the economic awards rendered by the labour court the defeated party needs to deposit an amount up to twice of what was ordered by the original court, or otherwise ask the Chief Judge of the Court of Appeals to stay the execution until the appeal is decided, provided that a wrongful order was issued. Monetary awards are subject to indexation according to the variation of the national currency from the date of the lawsuit and the date of the judgment.

(B) Relevant judicial decisions

On November 9, 2011, the Supreme Court of Justice of the Dominican Republic recognised the possibility of the worker signing a receipt of discharge after the termination of his employment contract, even resigning to the minimum rights set forth by the Labour Code, but in every such case judges must verify that his signature was obtained in a legal way and not by deception.

On February 8, 2012, the same Court, but through newly and recently appointed judges, decided that the worker's right to collect his salary is constitutionally protected because of his social content, which is why it has to be guaranteed even when the employer's assets cannot be seized as consequence of an ordinary law such as the Monetary and Financial Law, which provides that the assets belonging to the Central Bank cannot be the subject of foreclosures.

On March 21, 2012, when hearing a claim raised by the former President of one of the largest banks of the Dominican Republic who was previously accused of committing fraud against his employer, the same Court decided that the assignments for gas expenses, residential and cellular telephones, business expenses and performance bonuses, enjoy an extraordinary character with the main purpose to facilitate the workers' activities according to their position, and should not be considered as part of their ordinary salary in order to calculate severance and acquired rights.

(C) Future of labour legislation

The Dominican Republic has the second largest economy in the Caribbean region, therefore labour and employment matters are case-sensitive for every industry. Even though Dominican wage scales are quite competitive, workers benefit from a very protectionist system.

On January 26, 2010, the National Assembly proclaimed a new Constitution, which provides, as with the previous Constitutions, the people's right to work. This new Constitution may have an important effect on the Labour Code because of its overall impact on the judicial system, as it creates a Constitutional Court and includes new instruments to protect constitutional rights.

Recently, the business sector – through the Management Confederation of the Dominican Republic – has increased its demands to modify the Labour Code, insisting on the establishment of more flexible dispositions, to avoid the fraudulent business of some lawyers who claim to represent workers, as well as to make the Code more equitable. The Ministry of Labour also suggested modifications to make the Labour Code more flexible and transparent, and to prevent the abuse of rights and the bureaucracy of the system. The workers' unions and associations have indicated that they will not accept any modifications that fail to maintain the recognition of all the rights established already. By the time this paper was drafted, the only formal proposal that has been introduced to Congress tries to regulate the employment contracts of domestic workers.

Even when substantive rights cannot be modified unless they result in more favourable conditions for the workers because of the Dominican Republic's obligation to respect the International Labour Organization's agreements and recommendations, a broad modification must be conducted in the procedural part so as to make it more effective for both parties and reduce fraudulent manoeuvres without affecting the worker's rights.



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