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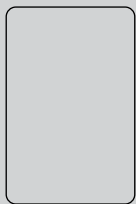
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Labour & Employment 2021

Contributing editors

**Matthew Howse, K Lesli Ligorner, Walter Ahrens,
Michael D Schlemmer and Sabine Smith-Vidal**

Morgan, Lewis & Bockius LLP

Lexology Getting The Deal Through is delighted to publish the sixteenth edition of *Labour & Employment*, which is available in print and online at www.lexology.com/gtdt.

Lexology Getting The Deal Through provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

Throughout this edition, and following the unique Lexology Getting The Deal Through format, the same key questions are answered by leading practitioners in each of the jurisdictions featured. Our coverage this year includes new chapters on Austria, Hong Kong, Hungary, Mauritius, Romania, Singapore and Taiwan.

Lexology Getting The Deal Through titles are published annually in print. Please ensure you are referring to the latest edition or to the online version at www.lexology.com/gtdt.

Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

Lexology Getting The Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We also extend special thanks to the contributing editors, Matthew Howse, K Lesli Ligorner, Walter Ahrens, Michael D Schlemmer and Sabine Smith-Vidal of Morgan, Lewis & Bockius LLP, for their continued assistance with this volume.



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LEGISLATION AND AGENCIES

Primary and secondary legislation

- 1 | What are the main statutes and regulations relating to employment?

The main statutes and regulations relating to Employment Labour Law of the Republic of Panama are the Constitution, the Law (including the Labour Code, supplementary laws and other rules of law with equal or inferior hierarchy), the international treaties ratified by the Republic of Panama, the applicable collective bargaining agreement (if any), the internal labour regulations, as well as jurisprudence, custom and usage of the company.

Protected employee categories

- 2 | Is there any law prohibiting discrimination or harassment in employment? If so, what categories are regulated under the law?

Law 7 of 14 February 2018, regulates all matters related to the protection of the honour, dignity, physical and psychological integrity of individuals who are victims of acts of discrimination.

This Law establishes measures to prevent and prohibit discriminatory acts, such as sexual harassment, bullying, and racism.

Enforcement agencies

- 3 | What are the primary government agencies or other entities responsible for the enforcement of employment statutes and regulations?

The primary government agency responsible for the enforcement of employment statutes and regulations in Panama is The Ministry of Labour.

WORKER REPRESENTATION

Legal basis

- 4 | Is there any legislation mandating or allowing the establishment of employees' representatives in the workplace?

The National Constitution of Panama recognised the right of association for employers, employees, workers and professionals of all classes, for purposes of economic and social activities.

A union under Panamanian Law is any permanent association of employees, employers and professionals of any class established for the study, improvement, protection and defence of its common economic and social interests.

In Panama, the employees unions are:

- 1 Trade unions: if they comprise persons of the same professions.
- 2 Company unions: if they comprise persons of several professions, occupation or specialty.
- 3 Industrial unions: if they comprise persons of several professions, occupations or specialties, who work for two or more companies of the same kind.
- 4 Mixed or multi occupational unions: mixed or multi-occupational unions, if they comprise persons of diverse or unrelated companies. These might be established only when, in a specific city, district, province and region, the number of employees of the same trade is less than 50.

The most common type of unions in Panama are company unions and industrial unions.

Powers of representatives

- 5 | What are their powers?

Unions have the power to represent its members in disputes, controversies and claims that may arise, and to sue or claim on their behalf and to sue or claim on behalf of them individually or collectively, or to intervene in individual or collective conflicts, controversies and claims, that may have been have been promoted.

BACKGROUND INFORMATION ON APPLICANTS

Background checks

- 6 | Are there any restrictions or prohibitions against background checks on applicants? Does it make a difference if an employer conducts its own checks or hires a third party?

Under Panamanian law, for labour reasons, the company can request an employee's background check.

The employer or a third party can request the background check for work purposes on behalf of the employee, but it will require the applicant's authorisation.

Medical examinations

- 7 | Are there any restrictions or prohibitions against requiring a medical examination as a condition of employment?

Panamanian Law has not regulated medical examinations as a condition of employment. However, if a company has established these examinations as a condition of employment, there is a high risk that the practice will be considered discriminatory.

Despite the aforementioned, we have to mention that Law 82, which regulates Gender Violence, establishes that the Ministry of Labor must create policies that allows access to jobs, in terms of recruitment

and selection for women, including not requiring a pregnancy test to access a job.

Drug and alcohol testing

8 | Are there any restrictions or prohibitions against drug and alcohol testing of applicants?

Article 126, 9 of the labour Code established that the employee must submit to physical examinations by a licensed medical doctor when seeking employment or during the course thereof if so ordered by their employers or competent authorities. These examinations would be to verify that they do not use drugs prohibited by law or have any mental disturbance that might endanger the safety of their fellow employees or the equipment and facilities of the employer.

We must confirm that the law does not establish restrictions nor probations against drug tests.

The company may reserve the right to hire an employee that does not want to submit that test.

HIRING OF EMPLOYEES

Preference and discrimination

9 | Are there any legal requirements to give preference in hiring to, or not to discriminate against, particular people or groups of people?

Nowadays, no preference in hiring has been established by law.

10 | Must there be a written employment contract? If yes, what essential terms are required to be evidenced in writing?

The employment contract shall be in writing and shall be signed upon commencement of an employment relationship.

The employment contract shall contain:

- 1 Personal Data: name, nationality, age, sex, civil status, address and number of the parties. If the employer is a juridical person, its name or trade name, address, name of its legal representative, and the data recorded in the Public Registry shall be provided.
- 2 Dependents of the Employee.
- 3 Workplace: the place or places in which the work or services are required to be performed.
- 4 Term: the term of the agreement if it is for a fixed period of time or an appropriate clause if it is for indefinite period of time or a specific piece of work.
- 5 The duration and regular division of the workday.
- 6 The wage, the form thereof and the day and place of their payment.
- 7 The place and date of the signing of the employment contract.
- 8 The signature of the parties.

11 | To what extent are fixed-term employment contracts permissible?

Fixed-term contracts are used to formalise temporary work relationships; in other words, they are used when the reason for hiring the employee responds to a need of a temporary nature for the company.

The term or duration of fixed term employment agreement may not be greater than one year. Only in cases of services that require special technical skills may an employment agreement provide for a term not exceeding three years.

Probationary period

12 | What is the maximum probationary period permitted by law?

When the rendering of service demands a particular competence or skill, the employer may include in the Labour Contract a trial period of up to three months, where any of the parties may terminate the labour relationship without any liability.

The Trial Period shall not be valid if it relates to a position that an employee has previously held in the same company.

Classification as contractor or employee

13 | What are the primary factors that distinguish an independent contractor from an employee?

In Panama, when we talk about a contractor, we refer to a relationship of professional nature. It is understood that those who render the service will not be under exclusivity conditions and will not be under legal subordination or economic dependence. Therefore, the professional is not subject to a work schedule, is not required to report daily at the offices of those who hired him or her, and neither is required to follow the orders or guidelines from who benefits from the service. Furthermore, the professional is not economically dependent of the company who hired his professional services.

In the case of employees, they will render services under legal subordination conditions or economic dependence to his or her employer.

Temporary agency staffing

14 | Is there any legislation governing temporary staffing through recruitment agencies?

The Labour Code regulates temporary staffing through recruitment agencies, specifically through Article 95. This article establishes that through the prior authorisation of the Ministry of Labour, it allows companies to provide their employees to perform services for other companies that require them temporarily, for periods that do not exceed two months.

Companies that utilise the employee's services shall be jointly and severally liable with the company that employs them.

FOREIGN WORKERS

Visas

15 | Are there any numerical limitations on short-term visas? Are visas available for employees transferring from one corporate entity in one jurisdiction to a related entity in another jurisdiction?

There are no numerical limitations for short-term visas in Panama.

However, some visas establish numerical limitations, such as:

- Permit for foreign personnel hired as experts or technicians within 15 per cent of specialised personnel: this type of visa limits the hiring of foreigners to 15 per cent of the national workers registered in the company's payroll.
- Permit for foreign personnel hired as experts or technicians within 10 per cent of regular personnel: this type of visa limits the hiring of foreigners to 10 per cent of the national workers registered in the company's payroll.

Immigration Laws in Panama offer a series of residence visas for foreigners coming to render a service in Panama. Each case will need to be reviewed in order to recommend the best options.

Spouses

16 | Are spouses of authorised workers entitled to work?

The visa category that their partner has selected determines their spouses' ability to work in Panama. Only some visa categories allow spouses to work while living in Panama.

General rules

17 | What are the rules for employing foreign workers and what are the sanctions for employing a foreign worker that does not have a right to work in the jurisdiction?

All foreigners that will render services in the national territory may obtain authorisation from the Ministry of Labour.

If the foreigner does not have authorisation from the Ministry of Labor (work permit), and the Ministry finds out that the company has a foreigner working without a work permit then the Institution may impose a fine on the company ranging from between US\$500 and US\$10,000 and in case of recidivism; the company's licence can be suspended.

Resident labour market test

18 | Is a labour market test required as a precursor to a short or long-term visa?

No market test is required under our legislation.

TERMS OF EMPLOYMENT

Working hours

19 | Are there any restrictions or limitations on working hours and may an employee opt out of such restrictions or limitations?

The Labor Code divides the day's 24 hours into two periods, to wit:

- day period: from 6am until 6pm; and
 - night period: from 6pm until 6am.
- There are three types of working days, to wit:
- day shift: completed fully within the day period and its maximum duration is eight hours;
 - mixed shift: completed during both periods, however it does not include more than three hours within the night shift, and its maximum duration is seven hours and 30 minutes; and
 - night shift: it includes more than three hours within the night period and its maximum duration is seven hours.

Employees may not work more than three hours overtime in one day, nor more than nine hours in one week.

When an employee works overtime in excess of the limits indicated, the excess shall be paid with a 75 per cent additional surcharge.

Overtime pay

20 | What categories of workers are entitled to overtime pay and how is it calculated?

We understand overtime, over hours or special shift, as the continuation of duties by the employee, once his or her shift has ended.

The Panamanian Labour Code does not discriminate nor exclude any category of employees with regards to the real possibility that any overtime worked is paid with the legal surcharges. Every employee has the right to receive the corresponding surcharges if they work overtime.

Overtime is paid with the following surcharges:

- 25 per cent of salary surcharge when carried out during the day period;

- 50 per cent of salary surcharge, when it is carried out during the night period, or when it is an extension of the mixed shift that started in the day period; and
- 75 per cent of salary surcharge when it is an extension of the night period, or of the mixed shift that started in the night period.

21 | Can employees contractually waive the right to overtime pay?

Employees cannot waive the right to overtime payment.

Vacation and holidays

22 | Is there any legislation establishing the right to annual vacation and holidays?

The Labor Code regulates vacations in Panama through article 54.

This article establishes that every employee is entitled to pay annual rest of 30 calendar days for every 11 months of continuous service, at a rate of one day for each day at the service of the employer.

Vacations are paid based on the average of the regular and special salaries earned by the employee during the 11 previous months, or the last basic salary, whichever is more favourable for the employee.

Regarding holidays, article 46 of the Labour Code establishes as a mandatory day of rest the following:

National Holidays

- 1 January;
 - Tuesdays of Carnivals;
 - 1 May;
 - 3 and 5 November;
 - 10 and 28 November;
 - 8 and 25 December; and
 - the day that the president-elect of the republic takes office.
- Day of National Observance
- 9 January; and
 - Holy Friday.

Sick leave and sick pay

23 | Is there any legislation establishing the right to sick leave or sick pay?

Article 200 of the Labour Code establishes that from the time that the employment agreement commences, the employee shall begin to accrue leave for disability at the rate of 12 hours for every 26 days worked or 144 hours per year.

In other words, the employee will accumulate 18 days of sick leave per year.

Leave of absence

24 | In what circumstances may an employee take a leave of absence? What is the maximum duration of such leave and does an employee receive pay during the leave?

The leaves of absence that employers are under the obligation to grant employees are the following:

- Grant leaves for partial shifts so that the employee may go to medical control appointments for his or her own care or that of children under two years of age. This leave is paid.
- An employee being chosen to represent the country or its corresponding social organisations during conventions, conferences, training activities, seminars or national and international competitions related to work or sports is entitled to keep earning his or her salary during the time required by the corresponding representation (article 160).

- In these cases, in the event of representations in the countryside, the period may not exceed three weeks, and abroad it can be of up to two months.
- An employee who is the father or mother of a disabled son or daughter is entitled to any necessary time to accompany the child to doctor appointments and required treatments.
- Necessary time is understood to be up to a maximum of 144 hours per year. This leave is paid. (article 17 of Law 42 of 1999, concordant with what is established in article 14 of Executive Decree No. 88 of 2002).
- When employees must be absent from work in order to appear as witnesses or act in any other proceedings before judges and officers of work, the employer cannot deny the corresponding leave. (article 823). This leave is paid.
- Employers must grant unpaid leave to any employee who must carry out a mandate or public office for a term of no less than six months, nor longer than two years (article 128, numeral 6).
- Employers must grant unpaid leave to directors of labour unions for the performance of any syndical mandate for a term of up to five years (article 128, numeral 7).
- Employers must allow employees to be absent from work in the case of 'serious domestic calamities' that have been duly proven (article 128, numeral 26).
- This leave is unpaid and the employer can discount it, or compensate it with equal time of service during different hours within the employee's work shift (does not constitute overtime).
- Employees who serve as census workers or table juries during national elections are entitled to paid leave for their corresponding training.
- Leaves for 'honeymoons', weddings, birth of children or death of employee's family members are usually regulated through collective agreements or in the Internal Labor Regulations.

Mandatory employee benefits

25 | What employee benefits are prescribed by law?

Social security affiliation, which includes professional risk insurance, 13th month pay and annual vacation.

In addition, any other benefit that the parties may agree at the beginning or at the end of the employment relationship.

Part-time and fixed-term employees

26 | Are there any special rules relating to part-time or fixed-term employees?

These are the special rules for employees hired through a fixed or part time employment agreement.

- The employment agreement may not exceed one year.
- At the end of the contract term, the employee will only receive pending salary, vacations and 13th month pay.
- If the company decides to dismiss the employee without justified cause of termination, the employee will be entitled to receive an indemnity of an equal amount of to the wage that he or she would have received during the remaining period of the contract.

Public disclosures

27 | Must employers publish information on pay or other details about employees or the general workforce?

No.

POST-EMPLOYMENT RESTRICTIVE COVENANTS

Validity and enforceability

28 | To what extent are post-termination covenants not to compete, solicit or deal valid and enforceable?

Since the Panamanian Constitutions established the right to work for every employee in Panama, these kinds of restrictions are not valid in Panama.

In any case, this will create a moral but not legal commitment for the former employees.

Post-employment payments

29 | Must an employer continue to pay the former employee while they are subject to post-employment restrictive covenants?

No.

LIABILITY FOR ACTS OF EMPLOYEES

Extent of liability

30 | In which circumstances may an employer be held liable for the acts or conduct of its employees?

An employer can be held liable for the acts or conduct of its employees when they cause damages to third parties while performing their duties for the company. For example, a driver who uses the employer's vehicle and has a collision causing injuries to third parties.

TAXATION OF EMPLOYEES

Applicable taxes

31 | What employment-related taxes are prescribed by law?

Social Security

The Social Security Administration offers and manages in favour of all insured workers, the following programmes: illness, maternity, old age, disability, death and occupational hazards.

To pay for these programmes, employers must currently contribute to the Institution a monthly amount equivalent to 12.25 per cent of the totality of the salaries paid to their employees within the month in question, while each employee must contribute monthly 9.75 per cent of the total salary received from his or her employer

Educational insurance tax

The employee will contribute to the Social Security Institution 1.25 per cent of the total salary earned during a month.

The employer contributes to the Social Security Institution a monthly sum equivalent of 1.50 per cent of the total salary paid to the employees during a month.

Income tax

The employee is also obliged to deduct the income tax for each employee according to the tariffs contemplated in the following table.

Annual Income	Tax Rate
Up to 11,000	0 per cent
From US\$11,000 to US\$50,000	15 per cent
Over US\$50,000	US\$5,850 on the first US\$50,000 and 25 per cent on the amount exceeding US\$50,000.

EMPLOYEE-CREATED IP

Ownership rights

32 | Is there any legislation addressing the parties' rights with respect to employee inventions?

The Labour Code establishes three classes of inventions during the labour relationship, namely; company inventions in which the process, the equipment, the technology, the elements of computer programming, the facilities, methods, and procedures belong to the employer; such inventions shall be property of the employer.

The inventions of services are those executed by the employees hired specifically for researching, studying and obtaining them; these inventions are property of the employer, but the inventor shall be entitled to have his or name recognised as the author of the invention.

Free inventions are those where the force of ingeniousness of the employees dominates; these inventions shall belong to their makers.

Trade secrets and confidential information

33 | Is there any legislation protecting trade secrets and other confidential business information?

The employee must refrain from disclosing to third parties the technical, administrative, and commercial secrets of the employer, unless prior authorisation is given. If the employee does not comply with this obligation, he or she may be dismissed with justified cause, and unable to receive compensation.

DATA PROTECTION

Rules and obligations

34 | Is there any legislation protecting employee privacy or personnel data? If so, what are an employer's obligations under the legislation?

The Law 81 on Personal Data Protection entered into force on 29 March 2021.

The company must have the prior, informed and unequivocal consent of the data subject to share the personal data of the employees, unless an authorised authority requires this information.

35 | Do employers need to provide privacy notices or similar information notices to employees and candidates?

Under Panamanian Labour Law, it is not necessary.

36 | What data privacy rights can employees exercise against employers?

Through well-founded and legitimate reasons, the owner of the personal data may refuse to provide his or her data or to be subject to certain treatment, as well as revoking any previous consent.

BUSINESS TRANSFERS

Employee protections

37 | Is there any legislation to protect employees in the event of a business transfer?

The Panamanian Labour Code established that the change or substitution of employer should not affect existing employment relationships in a manner prejudicial to employees.

Without prejudice to the legal obligations between an employer and employee under the civil law, the replaced employee shall always be jointly and severally liable with the employer for obligations existing under an agreement or imposed by law, which arose prior to the date of the substitution for a period of one year.

TERMINATION OF EMPLOYMENT

Grounds for termination

38 | May an employer dismiss an employee for any reason or must there be 'cause'? How is cause defined under the applicable statute or regulation?

The main approaches for ending a work relationship are laid out below.

Through mutual agreement or consent

The mutual agreement is valid as long as it is in writing and does not involve the employee waiving any rights. These non-renounceable rights include the following:

- salary;
- vacation;
- 13th month; and
- in the case of work relationships of indefinite duration, the seniority premium.

It is worth mentioning that the indemnity payment is not an acquired labour right and consequently, it may be negotiated between the parties.

Moreover, a termination through mutual agreement that does not include payment of indemnity is completely valid.

Due to the expiration of the period agreed, or due to the conclusion of the project.

Due to the employee's death

In this case, the employer must entrust to the Labour Courts, through a certificate of guarantee, the labour rights that the employee had accumulated until the moment of his or her death (article 155).

We clarify that there is no obligation to pay any indemnity to the family or heirs of the deceased employee.

This payment can be made directly by the employer, since it does not require the mediation of a lawyer.

Due to the employer's death, when this inevitably leads to the termination of the work relationship

It only applies to few cases, such as:

- when a person is hired to take care of a sick person, who subsequently dies;
- when a domestic employee works in a home inhabited by a single person who subsequently dies; or
- when a secretary works for a professional who practices independently and in a private capacity (such as a doctor, lawyer, architect, etc) and he or she dies.

In these cases, there is no obligation either to pay any indemnity to the employee.

Due to the employee's resignation

In order to be valid it must be in writing and it must be ratified or sealed by the Ministry of Labour (MITRADEL).

Any resignation not duly ratified by MITRADEL is plainly neither valid nor effective.

An employee has the obligation to notify the employer of his or her decision to resign with at least 15 days' notice.

Any employee who does not give the employer the above-described notice period must pay the employer the equivalent of a week's salary, which can be deducted directly from his or her seniority premium.

Through the employer's unilateral decision

Termination during the employee's test period is regulated as follows.

- The test period may not exceed three months.
- The clause establishing the test period must be clearly expressed in a written work contract.
- It only applies to those jobs or positions that require certain abilities or special skills.
- It is not valid to establish a test period when rehiring an employee for the same job he or she already had within the company.
- When dismissing an employee during the test period, it is not necessary to pay the employee any indemnity; only his or her acquired labour rights.
- Neither maternity leave, nor organised labour rights can be claimed during the test period.

Termination within the first two years of service is regulated as follows.

- It only applies to work relationships of an indefinite nature.
- The employer is under the obligation to pay an indemnity.
- The employer is under the obligation to give the employee 30 days' notice, or carry out the dismissal immediately and pay the amount corresponding to this period (one month's salary).
- The notice period shall count as of the payment period following the notice of dismissal.

Dismissal based on a justified cause

Justified causes for dismissal are established in article 213 of the Labour Code, and may be of a disciplinary nature, a non-attributable nature or a financial nature.

The main causes for dismissal of a disciplinary nature are as follows.

- carrying out actions that imply disloyal competition;
- providing a false doctor's certificate to justify absences;
- sleeping during work hours;
- stamping another employee's punch card;
- constant shortages of money; and
- making collections of payments and neither reporting, nor delivering the money to the company.

Unjustified absences include three consecutive or alternate days within one month; two Mondays within a month; and six Mondays within one year.

For the purposes of this cause of dismissal, Mondays shall be considered as the day immediately following a national holiday or day of mourning (for example, Ash Wednesday).

When should doctor certificates be presented to the company to justify absences?

This matter is resolved by internal work regulations

However, in the absence of internal work regulations, the Labour Courts have determined that an employee returning to work has until the day following the day he or she receives the corresponding period's salary in order to justify his or her absence.

Unjustified non-compliance of orders

Not every non-compliance of orders justifies the employee's dismissal; a distinction must be made between pure disobedience, which would only justify a disciplinary sanction, and serious disobedience, which would justify the employee's dismissal.

In order to fully establish the grounds for dismissal, it is necessary for the following to take place:

- that the orders be given by the employer in a clear manner;

- that they relate to the work contracted;
- that there is no justification for any non-compliance with the order;
- that the non-compliance causes damages to the employer; or
- immoral or delinquent behaviour (including sexual harassment) by the employee.

It is not necessary that the criminal authorities first determine the perpetration of the crime in order for the employer to apply this cause in the following situations.

- Show up for work under the effects of alcohol or illegal drugs in more than one occasion within the same year.
- Carrying out violent acts, threatening or insulting the employer or coworkers.

It is important that there is no provocation; prior provocation weakens the grounds for dismissal in the following cases.

- Causing material damages to the employer's equipment, tools, products, basic materials and facilities.
- When an exempt employee carries out acts or omissions that lead to the loss of trust by the employer.

This cause only applies to the above exempt employees.

It is not about a subjective loss of trust; the loss of trust must be duly supported by objective acts or omissions. Also, the loss of trust must be tightly linked to other grounds for dismissal.

Notice

39 | Must notice of termination be given prior to dismissal? May an employer provide pay in lieu of notice?

The notice of termination must be given for employees that have less than two years of service at the company, and this prior notice should be of one month before the date of termination.

It is permitted to pay one month of salary instead of giving the prior notice.

40 | In which circumstances may an employer dismiss an employee without notice or payment in lieu of notice?

When there is a justified cause of termination.

Severance pay

41 | Is there any legislation establishing the right to severance pay upon termination of employment? How is severance pay calculated?

The indemnity payment does not constitute part of the acquired labour rights of every employee.

It must be paid only when the following occurs:

- A Labour Court declares the employee's dismissal as unjustified.
- A Labour Court declares the employee's resignation as justified.
- In the case of dismissals due to financial reasons, with MITRADEL's prior authorisation. (In these cases even when the entity authorises the dismissals, as an exception the employer must pay the indemnity).
- In the case of dismissals based on article 212 of the Labor Code (employees with less than two years in service).
- Terminations through mutual agreement, when the complete or the partial indemnity payment is negotiated.

Method of calculating the indemnity payment

The indemnity payment in Panama is calculated taking into consideration the employee's time of service, and his or her average salary earned during the last six months of work.

Article 225 of the Labour Code expressly establishes that the indemnity payment is calculated as follows:

Only and exclusively to the time of service before 2 April 1972

- if the time served is less than one year: one week of salary for every three months of service, and never less than one week of salary;
- from one to two years of service: one week of salary for every two months of work;
- from two to five years of service: three months' salary;
- from five to 10 years of service: four months' salary;
- from 10 to 15 years of service: five months' salary;
- from 15 to 20 years of service: six months' salary; and
- more than 20 years of service: seven months' salary.

This is not applied in a combined manner.

Service time after 2 April 1972, specifically to all persons who started their work relationship before 14 August 1995

- if the time of service is less than one year: one week of salary for every three months of service, and never less than one week of salary;
- from one to two years of service: one additional week of salary for every two months of work;
- between two to 10 years of service: three additional weeks of salary for each year of completed work; and
- more than 10 years of service: one additional week for each completed year of service.

This is applied in a combined manner.

Labour relationships that started after 14 August 1995

- it is calculated at a rate of 3.4 weeks for each complete year of services or its proportional amount; and
- after 10 years of service, an additional week of salary is paid for each complete year of service, or its proportional amount.

Pursuant to what is established in article 149 of the Labour Code, the indemnity payment is based on the average salary earned by the employee during the last six months of service or during the last 30 days, whichever is more favorable to the employee.

An example using the third situation (labour relationships that started after 14 August 1995): the employee earned an average salary of US\$1,500 per month, and worked for three years, six months and 15 days.

$US\$1,500.00 / 4.333$ (weeks in a month) = US\$346.18 (weekly salary)

Indemnity for the three years: 346.18×3.4 weeks \times three years = US\$3,531.03

Indemnity for the six months: 346.18×3.4 weeks / 12 months \times six months = US\$588.51

Indemnity for 15 days: 346.18×3.4 weeks / 365 days of the year \times 15 days = US\$48.37

Total indemnity = $3,351.03 + 588.51 + 48.37$ = US\$3,987.91

Finally, it is important to mention that in the case of early terminations of Contracts for Definite Periods or for Concluded Projects (temporary hiring) the indemnity will be equal to the Work Contract's remaining salaries, as established by article 227 of the Labour Code.

Procedure

42 | Are there any procedural requirements for dismissing an employee?

No, unless the company is dismissing an employee who has special protection.

Employee protections

43 | In what circumstances are employees protected from dismissal?

Panamanian Labour Legislation protects employees from dismissal when those employees have special protection against the dismissal.

The most common special protections under Panamanian Law are the following.

Maternity privileges

Every female employee who is pregnant is protected by maternity privileges, which constitute a legal protection against dismissal.

This legal protection against dismissal protects the employee during the whole pregnancy, her pre-birth and post-birth maternity leave and for up to one additional year after the employee returns to work after giving birth.

Special protection of employees with a disability

Establishes a jurisdiction or legal protection against dismissal that covers all workers with proven disabilities, as well as those employees who are parents or guardians of persons with disabilities.

Electoral protection

This is granted in favour of candidates for elected office and election delegates.

This protection starts from the moment of the nomination until two months after the closing of the electoral process.

Special protection of negotiation, strike and arbitration

Article 441 of the Labour Code regulates this special protection, which may run in succession, covering the period of direct negotiation of a collective labour agreement (bargaining forum); the compulsory conciliation procedure prior to the strike and the time available to workers to declare it, during the strike or during the arbitration, the employees will have an special protection against the dismissal.

Union immunity

This special protection shall be enjoyed by:

- members of unions being formed;
- board members of the employees unions;
- federation and confederation of centrals;
- substitutes for directors of the unions;
- representatives of the union; and
- the term of this special protection will vary.

Special protection in favour of the employee who has reported inconsistencies in the payment of the company's social security

The employee who reports his or her employer for failure to register or for omissions or breaches of their employer's obligations to the Social Security Agency, shall enjoy 18 months from the date on which the worker filed his or her complaints of special protection.

Special protection for employees who are suffering from chronic, involute or degenerative diseases that cause partial disability at work

The employees who suffer one of the diseases established by law, enjoys a special protection against dismissal.

Mass terminations and collective dismissals

44 | Are there special rules for mass terminations or collective dismissals?

The Labour Code contemplates mass or collective dismissals, mainly for cases of termination of employment with cause for financial reasons.

The collective dismissal will require the authorisation of the Ministry of Labour.

Class and collective actions

45 | Are class or collective actions allowed or may employees only assert labour and employment claims on an individual basis?

Employee's unions are allowed to assert labour claims against employees.

Mandatory retirement age

46 | Does the law in your jurisdiction allow employers to impose a mandatory retirement age? If so, at what age and under what limitations?

Our Labour Law does not permit imposing a mandatory retirement on employees.

DISPUTE RESOLUTION

Arbitration

47 | May the parties agree to private arbitration of employment disputes?

They can agree to arbitration, but most of the disputes must be resolved in Labour Court.

Employee waiver of rights

48 | May an employee agree to waive statutory and contractual rights to potential employment claims?

Acquired labour rights are unwaivable; in any case, the employees could negotiate the indemnity under certain circumstances.

Limitation period

49 | What are the limitation periods for bringing employment claims?

The employee has two months to sue the employer for unjustified dismissal, starting from the dismissal date.

Regarding the claim of salaries and other labour benefits, the limitation term is one year starting from the date of termination of the labour relationship.

The claim of overtime expires five years after the date in which the right of payment arose, except if dealing with employees in a position of trust, in whose case the limitation term is three months only.

UPDATE AND TRENDS

Key developments of the past year

50 | Are there any emerging trends or hot topics in labour and employment regulation in your jurisdiction? Are there current proposals to change the legislation?

Not at this time.

Coronavirus

51 | What emergency legislation, relief programmes and other initiatives specific to your practice area has your state implemented to address the pandemic? Have any existing government programmes, laws or regulations been amended to address these concerns? What best practices are advisable for clients?

In Panama, in order to avoid labour terminations the government allowed the following:

- employers could reduce daily shifts with corresponding salary decrease; and
- temporary suspensions of the Labour Contract, which means that for a certain period employees do not work and the employer does not pay salary.

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