

THE EMPLOYMENT  
LAW REVIEW

THIRTEENTH EDITION

Editor  
Erika C Collins

THE LAWREVIEWS

# THE EMPLOYMENT LAW REVIEW

THIRTEENTH EDITION

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# PREFACE

For each of the past 12 years, we have surveyed milestones and significant events in the international employment law space to update and publish *The Employment Law Review*. Every year when I update this book, I reread the Preface that I wrote for the first edition in 2009. In that first edition, I noted that I believed that this type of book was long overdue because multinational corporations must understand and comply with the laws of the various jurisdictions in which they operate. I have been practising international employment law for more than 25 years, and I can say this holds especially true today, as the past 13 years have witnessed progressive shifts in the legal landscape in many jurisdictions. This 13th edition of *The Employment Law Review* is proof of the continuously growing importance of international employment law. It has given me great pride and pleasure to see this publication grow and develop to satisfy its initial purpose: to serve as a tool to help legal practitioners and human resources professionals identify issues that present challenges to their clients and companies. As the various editions of this book have highlighted, changes to the laws of many jurisdictions over the past several years emphasise why we continue to consolidate and review this text to provide readers with an up-to-date reference guide.

Speaking of changes, we have now been living with the covid-19 pandemic for more than two years. In 2020, we entered a new world controlled and dictated by a novel coronavirus, one that spread at a rapid pace and required immense government intervention. The ways in which governments responded (or failed to respond) shed light on how different cultures and societies view, balance and respect government regulation, protection of workers and employee privacy. Employment practitioners around the globe have been thinking about and anticipating the future of work for a decade. But with the onslaught of covid-19, the future of work was foisted upon us. Covid-19 has expedited the next decade of technological advancement and employer–employee relations, causing entire industries and workplaces to change in real time and not over the course of years.

Unsurprisingly, this year's text would not be complete without another global survey of covid-19 that summarises some of the significant legislative and legal issues that the pandemic has presented to employers and employees. The updated chapter highlights how international governments and employers continued to respond to the pandemic during the course of 2021, from shutdowns and closures to remote working and workplaces reopening. Employers around the globe have needed to be nimble to deal with the constantly changing environment.

The other general interest, cross-border chapters have all been updated. The #MeToo movement continues to affect global workforces. The movement took a strong hold in the United States at the end of 2017, as it sought to empower victims of sexual harassment and assault to share their stories on social media so as to bring awareness to the prevalence of this behaviour in the workplace. In this chapter, we look at the movement's success in other

countries and analyse how different cultures and legal landscapes affect the success of the movement (or lack thereof) in a particular jurisdiction. To that end, this chapter analyses the responses to and effects of the #MeToo movement in several nations and concludes with advice to multinational employers.

The chapter on cross-border mergers and acquisitions continues to track the variety of employment-related issues that arise during these transactions. The covid-19 pandemic initially caused significant challenges to mergers and acquisitions (M&A). Deal activity slowed substantially in 2020, negotiations crumbled and closings were delayed. Although uncertainty remains about when merger and acquisition activity will return to pre-pandemic levels, it appears that businesses and financial sponsors once again have begun to pursue transactions. Parties already have begun to re-engage on transactions previously put on hold and potential sellers appear willing to consider offers that provide a full valuation. The content of due diligence may change because the security of supply chains, possible crisis-related special termination rights in key contracts and other issues that were considered low-risk in times of economic growth now may become more important. This chapter, and the relevant country-specific chapters, will aid practitioners and human resources professionals who conduct due diligence and provide other employment-related support in connection with cross-border corporate M&A deals.

Global diversity and inclusion initiatives remained a significant issue in 2021 for multinational employers across the globe. Many countries in Asia, Europe and South America have continued to develop their employment laws to embrace a more inclusive vision of equality. These countries enacted anti-discrimination and anti-harassment legislation, and regulations on gender quotas and pay equity, to ensure that all employees, regardless of gender, sexual orientation or gender identity, among other factors, are empowered and protected in the workplace. Unfortunately, there are still many countries where certain classes of individuals in the workforce remain underprotected and under-represented, and multinational companies still have many challenges with tracking and promoting their diversity and inclusion initiatives and training programmes.

We continue to include a chapter that focuses on social media and mobile device management policies. Mobile devices and social media have a prominent role in, and impact on, both employee recruitment efforts and the interplay between an employer's interest in protecting its business and an employee's right to privacy. Because companies continue to implement bring-your-own-device programmes, this chapter emphasises the issues that multinational employers must contemplate prior to unveiling such a policy. Particularly in the time of covid-19 and remote working, bring-your-own-device issues remain at the forefront of employment law as more and more jurisdictions pass, or consider passing, privacy legislation that places significant restrictions on the processing of employees' personal data. This chapter both addresses practice pointers that employers must bear in mind when monitoring employees' use of social media at work, and provides advance planning processes to consider prior to making an employment decision based on information found on social media.

Our final general interest chapter discusses the interplay between religion and employment law. Religion has a significant status in societies throughout the world, and the chapter not only underscores how the workplace is affected by religious beliefs but also examines how the legal environment has adapted to them. The chapter explores how several nations manage and integrate religion in the workplace, in particular by examining headscarf bans and religious discrimination.

In addition to the six general interest chapters, this edition of *The Employment Law Review* includes country-specific chapters that detail the legal environment and developments of 38 jurisdictions around the world.

Covid-19 aside, in 2022, and looking into the future, global employers continue to face growing market complexities, from legislative changes and compliance challenges, to technological and societal forces that are transforming the future of work. Whether solving global mobility issues, designing employee equity incentives, addressing social media issues, negotiating collective bargaining agreements or responding to increasing public attention on harassment or equal pay issues, workforce issues can affect a company's ability to attract and retain talent, or damage its reputation and market value in an instant. These issues have created a confluence of legal and business challenges that no longer can be separated or dealt with in isolation. As a result, every company requires business advisers who can address the combined business and legal issues relating to its multinational workforce. It is my hope that this text provides legal practitioners and human resources professionals with some guidance, best practices and comprehensive solutions to significant workforce issues that affect a company's market position, strategy, innovation and culture.

A special thank you to the legal practitioners across the globe who have contributed to this volume for the first time, as well as those who have been contributing from the first year. This edition has once again been the product of excellent collaboration, and I wish to thank our publisher. I also wish to thank all our contributors and my Faegre Drinker associates, Katherine Gordon, Caroline Guensberg, Charlotte Marshall and Kerry Zaroogian, and my law partners, Alex Denny, Nicole Truso and Jill Zender, for their invaluable efforts in bringing this 13th edition to fruition.

**Erika C Collins**

Faegre Drinker Biddle & Reath LLP  
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# PANAMA

*Vivian D Holness<sup>1</sup>*

## I INTRODUCTION

Employment relationships are mainly regulated by the Constitution of the Republic of Panama and the Labour Code. The Constitution provides for the core inalienable rights relating to employment relationships, and the Labour Code regulates in detail such relationships. The Labour Code was enacted through Cabinet Decree No. 252 of 30 December 1972 and since then has undergone only one major reform in 1995.

Depending on the nature of a labour dispute, it may be resolved before the conciliation boards of the Ministry of Labour, in the case of unjustified dismissals or claims for up to US\$1,500; or before the sectional labour courts, in the case of claims relating to vested rights. Cases brought before the conciliation boards of the Ministry of Labour may be appealed before the superior labour courts; cases brought before the sectional labour courts may also be appealed before the superior labour courts and, after that, an extraordinary action may be brought before the Third Chamber of the Supreme Court.

Other employment matters, such as authorisation for mass dismissals, are handled by the General Directorate of Employment of the Ministry of Labour.

## II YEAR IN REVIEW

Labour regulations in Panama are not prone to changes. As mentioned in Section I, there has been only one major reform in 40 years, which took place in 1995. As a general rule, employment relationships may only be terminated based on a justified cause, explicitly established in the Labour Code. However, since 1995, employers have been able to terminate employees without cause, but only during the first two years of employment.

Since 1995, minor changes have been introduced with the aim of protecting employees in certain lines of business. For example, as of 2010, private security companies are obliged to provide complete uniforms free of charge to their employees, and life and accident insurance coverage of a minimum of US\$25,000 per employee.

Other minor changes were introduced between 2017 and 2018, namely the approval of three days of paid paternity leave, and employers' obligation to have an internal procedure to attend complaints that are filed as a result of discriminatory actions in the workplace.

Early in 2020, Law 126 regulating teleworking was enacted. This new law turned out to be of major importance given how the covid-19 pandemic has affected the way in which businesses usually operate.

---

<sup>1</sup> Vivian D Holness is a senior associate at Arias, Fábrega & Fábrega.

### III SIGNIFICANT CASES

Even though labour claims are filed daily before the courts, there is not any recent case law dealing with relevant topics, such as restrictive covenants or payment in kind. This may be the result of negotiated terminations. In Panama, most relevant or contentious matters are never discussed before the courts because of the common tendency to settle all disputes. Both parties benefit from the settlement of a dispute: for example, the employee achieves acknowledgement of his or her rights and consequently receives payment within a short time, and employers incur fewer costs by not having to pay court expenses.

### IV BASICS OF ENTERING INTO AN EMPLOYMENT RELATIONSHIP

#### i Employment relationship

Under Panamanian law, an employment relationship is formed by the rendering of services by one person to another, provided that the former is subordinated to or economically dependent on the latter. An employment relationship may exist, therefore, regardless of whether there is a written agreement.

Subordination consists of the authority to command exercised, or susceptible to being exercised, by the employer or its representatives with regard to execution of the work.

A state of economic dependence will be deemed to exist when the amount received by the individual who performs the service or executes the work constitutes his or her only or main source of income.

In the absence of a written contract, facts and circumstances alleged by the employee and that should appear in a written contract will be presumed to be true. These presumptions may be rebutted by evidence that proves otherwise beyond a reasonable doubt.

Employment contracts must be executed in writing and must contain at least the following information:

- a* personal information about the employee;
- b* the names of the employee's dependants;
- c* the work to be performed and the method of performing it;
- d* the place of work;
- e* the term of the agreement;
- f* the duration of the working day;
- g* wages; and
- h* the place and date of signing.

The parties to the contract shall sign three copies, one of which shall be kept by the employer, one delivered to the employee and one submitted for registration with the Ministry of Labour.

Employment contracts may be executed for an indefinite period, for a specified period or for a specified piece of work.

Contracts for a specified period may not be used for the purpose of temporarily filling a job that is permanent in nature, excluding certain exceptions contained in the Labour Code. The duration of an employment contract for a specified period shall not be more than one year. In the case of services that require special technical skills, the duration of the contract may be stipulated up to a maximum of three years.

## **ii Probationary periods**

If the services to be rendered require certain special skills or dexterity, it shall be valid to stipulate in writing a clause whereby the employment relationship will be subject to a probationary period of up to three months. During this period, any of the parties can terminate the labour relationship without liability and without the need to give notice.

## **iii Establishing a presence**

For a foreign company to be able to hire employees, it must be officially registered to carry out business in Panama, either as a branch or through a local subsidiary. Foreign companies that do not wish to officially register in Panama usually use agencies or payroll service providers to engage employees locally.

Depending on the nature of the services, foreign companies that are not officially registered in Panama may acquire the services of independent contractors. If this is the case, it is important to verify that the services are not provided under conditions of subordination or economic dependency to avoid the relationship being considered as an employment relationship.

If the contractor is in fact an independent entity acting in the ordinary course of its business, then a permanent establishment would not be created for the foreign company. If that is not the case and the person is a dependent agent, a permanent establishment would be created if the person has the power to execute contracts on behalf of the foreign company and exercises that power habitually. In that case, a permanent establishment would be created with regard to the activities of such a contractor in Panama.

If a permanent establishment is created, the company will be subject to income tax as a regular Panamanian company on the taxable income attributable to the permanent establishment. The current corporate income tax rate in Panama is 25 per cent. If a permanent establishment is created, it is advisable to consider incorporating an entity in Panama or registering a branch of the foreign company to facilitate all compliance and reporting processes.

In an employment relationship, an employee is entitled to social security coverage. The benefits offered by the social security system include a disability subsidy, maternity leave, a retirement pension, death benefits, a funeral subsidy, medical, dental and hospitalisation support and workers' compensation relating to occupational hazards. Both the employer and the employee must contribute a percentage of the employee's salary to this system. Currently, the employer's contribution is equivalent to 12.25 per cent of the employee's salary and the employee's contribution is equivalent to 9.75 per cent of the salary.

Employers also pay a rate of between 0.98 per cent and 5.6 per cent of the salaries paid, to cover workers' compensation. The actual rate is determined by the Social Security Administration, depending on the activities carried out by the employer.

The law provides that the granting of benefits provided within the social security system, by the system's administration, releases the employer from liability with regard to any occupational illness or accident suffered by the employee, except when the occupational hazard has occurred as a result of negligence or fault on the part of the employer, in which case additional tort liabilities may arise.

The disability of an employee because of an accident or occupational illness, provided it is not of an absolute and permanent nature, suspends the employment contract.

The employee's social security contribution and the income tax generated must be withheld, declared and paid monthly by the employer into the social security system.

## **V RESTRICTIVE COVENANTS**

Even though restrictive covenants are not regulated by Panamanian law, and there is no jurisprudence discussing their enforceability, more and more international companies are proposing inclusion of these types of covenants in employment contracts. Given that there is uncertainty as to the enforceability of restrictive covenants, and some argue that they may violate the constitutional right to employment, they are included in separate private agreements, rather than employment contracts.

## **VI WAGES**

### **i Working time**

The working day is divided into the following shifts or working periods:

- a* day work: from 6am to 6pm; and
- b* night work: from 6pm to 6am.

Hours of work within these working periods shall be classified as day shift (day work) and night shift (night work) respectively. A mixed shift is made up of hours in both periods of work, provided that the period of night work is less than three hours. A shift including more than three hours of night work will be considered a night shift.

The maximum daily hours of work shall be eight hours and thus the maximum working week will be 48 hours. The maximum night shift shall be seven hours and the corresponding working week will be a maximum of 42 hours. The maximum duration of a mixed shift is seven-and-a-half hours, and the corresponding working week is a maximum of 45 hours.

### **ii Overtime**

Working time exceeding the limits set forth in Section VI.i, or exceeding the lower limits as provided by contract or special legally prescribed limits, constitutes overtime and is recognised by the following additional payments on top of an employee's hourly wage:

- a* 25 per cent of ordinary wages when work is performed between 6am and 6pm;
- b* 50 per cent of ordinary wages when work is performed between 6pm and 6am or when mixed shifts, which start in the daytime, are prolonged; and
- c* 75 per cent of ordinary wages when an overtime work shift is an extension of a night shift or of a mixed shift that starts between 6pm and 6am.

In addition, the following limitations apply:

- a* overtime will not be permitted in work that, owing to its nature, is dangerous or unhealthy;
- b* persons under the age of 16 cannot work overtime;
- c* an employer is obliged to employ as many teams made up of different workers as may be necessary to carry out the work in shifts that do not exceed the ordinary limits described in this chapter; and
- d* a maximum of three hours' overtime is permitted in one day, and a maximum of nine hours in one week.

If, for any reason, an employee renders services in an overtime period in excess of the limits stated in point (d) above, the excess shall be paid with the addition of a further 75 per cent, apart from other penalties prescribed by law.

## **VII FOREIGN WORKERS**

As a general rule, all employers must contract employees who are either Panamanian citizens or foreigners who are either married to a Panamanian citizen or who have resided in the country for at least 10 years, so as to make up at least 90 per cent of the ordinary workforce. They may also engage expert or technical foreign personnel, but not exceeding 15 per cent of the total number of workers.

There are certain exceptions to these general restrictions; for example, foreign employees who hold certain special immigration statuses are exempted from complying with these restrictions. Individuals regarded as having a special immigration status include residents under the Marrakech Treaty, foreign professionals who do not require licences to practise their profession, or citizens of certain countries considered friendly to Panama.

Employers who need to contract foreign personnel must obtain an authorisation issued by the Ministry of Labour. This authorisation, or work permit, is valid for renewable two-year periods, except for citizens of certain countries considered friendly to Panama who may obtain work permits for three-year periods. Employees under the Marrakech Treaty may renew their resident permits and work permits, but only for a maximum of six years.

All foreign employees providing services in Panama are subject to local employment laws and their salaries are subject to income tax and social security withholdings, at the same rates as Panamanian employees. Executives of companies holding a multinational headquarters licence or who have a special temporary residency permit are exempted from the payment of income tax and social security contributions.

## **VIII GLOBAL POLICIES**

The Labour Code provides that every company with 10 or more employees must have approved internal work regulations. These have to be previously approved by the Ministry of Labour and even though employees' consent is not required, they are entitled to comment on any proposed internal work regulations within 30 days of notification of the proposals.

The Ministry of Labour has provided certain guidelines on the minimum provisions that must be included in internal work regulations. These include employment applications and contracts, work schedules, wages, work by women and minors, safety and hygiene measures, employees' obligations and prohibitions, employers' obligations and prohibitions, disciplinary measures and company committees. The employees' and employers' obligations and prohibitions include provisions relating to discrimination and sexual harassment.

The internal work regulations must be drafted in Spanish and posted for the employees' general knowledge either on the company's intranet or in a place with unrestricted access. In addition to employment contracts, internal work regulations regulate the particularities of employment relationships in every workplace.

## **IX PARENTAL LEAVE**

Labour regulations provide for both maternity and paternity leave.

Maternity leave starts six weeks before the expected date of delivery and ends eight weeks after delivery, for a total of 14 weeks. Wages due during maternity leave will be paid by the social security system provided that the employee has accrued a total of nine monthly social security quotas before the seventh month of pregnancy. If the employee has not accrued the minimum number of quotas required, then wages due during maternity leave shall be paid by the employer.

Paternity leave was introduced in 2017 and grants three working days of paid leave to employees, starting on the date of birth of the child. Wages due during paternity leave are paid by the employer. To be entitled to paternity leave, the employee must have declared a spouse on his employment contract or personal data forms and must have communicated to the employer the forthcoming birth of their child at least one week prior to the expected date of delivery. Paternal leave may be granted only once during each calendar year.

Under the Labour Code, the effects of the employment relationship are suspended during maternity or paternity leave; therefore, employees on maternity or paternity leave are protected from dismissal.

## **X TRANSLATION**

As a general rule, all documents relating to employment relationships must be drafted in Spanish. Exceptionally, instructions regarding the performance of work may be written in the language in which an employee has greatest proficiency.

What is usually recommended to international companies is that documents are drafted in a two-column style, showing Spanish and English versions of the text. This has been accepted by labour authorities.

## **XI EMPLOYEE REPRESENTATION**

Both the Constitution and the Labour Code recognise the right of employees to form or join unions. To organise a union, the law requires a minimum of 40 members.

The Labour Code contemplates the following types of workers' unions:

- a* trade unions – comprised of persons of the same profession, occupation or speciality;
- b* company unions – comprised of persons of several professions, occupations or specialities who work for the same company;
- c* industrial unions – comprised of persons of several professions, occupations or specialities who work for two or more companies of the same kind; and
- d* mixed or multi-occupational unions – comprised of persons of diverse professions, occupations or specialities who work for diverse or unrelated companies. These unions may be established only when, in a specific city, district, province or region, there are fewer than 50 employees in the same trade.

The election and terms of union representatives and the frequency of meetings are governed by a union's statutes. A union may establish ordinary and extraordinary contributions for its members. Employers are obliged to withhold the contributions established by the union from their employees' salaries, and to deliver those contributions to the union. Employees who are not members of a union may nevertheless be required to make contributions in case they receive benefits from a collective agreement entered into between the union and the employer.

Any employer with employees who are members of a union is obliged to enter into a collective bargaining agreement with those employees, if the union so requests. If an employer refuses to enter into a collective agreement, its employees may, after termination of conciliation proceedings, exercise the right to strike.

Workers have the right to strike to protect their working conditions or to improve them. Collective disputes may be submitted totally or partially to arbitration.

The Labour Code contains certain provisions aimed at protecting unions. Among them, it is important to mention the union immunity that is granted to certain employees in specific situations, namely:

- a* members of unions in formation;
- b* members of the directing council of unions, federations, confederations or workers' centres;
- c* substitute members of a directing council, even if they are not active; and
- d* union representatives.

Employees protected by union immunity cannot be dismissed without the prior authorisation of the labour court and must be based on a justified cause provided in law.

In addition to unions, every workplace, company or establishment that employs 20 or more employees must establish a company committee made up of two representatives of the employer and two employees who are members of the union. The union members shall be appointed annually by the union and the committee shall be established in such a way that its members may meet on equal terms. If there is no union, the employees shall elect their representatives.

The employer or its representatives and the union or employees may place before the company committee questions relating to production, productivity and its improvement, the qualifications of employees and other matters.

The company committee, upon the request of an interested party, shall have the power of conciliation in controversies arising from breach by either an employee or an employer of their obligations.

## **XII DATA PROTECTION**

### **i Requirements for registration**

Data protection regulations recently entered into effect and the use, storage or transfer of personal and sensitive data requires express consent from the owner of the data. Compliance of these regulations is overseen by the National Authority of Transparency and Access to Information. Notwithstanding this, there are no registration requirements for those managing or storing personal or sensitive data. The new data protection regulations do not contain any specific provisions regulating the protection or privacy of employees' data; therefore, the general requirement of written consent will apply.

### **ii Cross-border data transfers**

There are no restrictions on the international transfer of personal or sensitive data outside Panama, provided express consent for its transfer has been granted by the data subject.

### **iii Sensitive data**

Only medical information is considered sensitive and employees are not obliged to disclose this type of information to their employer, except – and only if authorised by the employee – for purposes of obtaining private medical or life insurance. This information must be treated as strictly confidential.

### **iv Background checks**

As a general rule, background checks are allowed. It is customary for potential employers to independently verify the information provided by potential employees on application forms relating to former employment, personal references and academic background, for which the employees' consent is not required. Credit and criminal record checks are also allowed; however, the applicant's written authorisation is required for both these checks.

## **XIII DISCONTINUING EMPLOYMENT**

### **i Dismissal**

Employees who have served continuously for less than two years can be dismissed without cause. If this is the case, the employer must give the employee notice of the unjustified dismissal 30 days in advance or pay a sum equivalent to 30 days' salary and, in addition, pay the employee severance for unjust dismissal that is equivalent to 3.4 weeks of salary for each year of service, calculated pro rata. The salary for this purpose will be the average monthly salary during the last six months of employment.

Employees who have served continuously for more than two years can only be dismissed based on just cause as provided by law. If an employer decides to terminate the contract of an employee who has served for more than two years, without cause, he or she will normally try to negotiate a mutual termination agreement, in which compensation similar to that applicable to unjust termination will be offered to the employee.

There are three types of justified causes that empower an employer to terminate an employment relationship without severance.

First, the Labour Code sets forth 16 causes of a disciplinary nature, including when an employee:

- a* engages, while on duty, in acts of violence, threats or ill treatment against the employer, or his or her family, or the employee's fellow workers, or members of the management of the undertaking, except in the case of self-defence;
- b* discloses technical, commercial or industrial secrets or other information of a confidential nature that may cause damage to the employer, without the authorisation of the employer;
- c* while on duty, performs serious dishonest or dishonourable actions or criminal actions against property to the detriment of the employer; and
- d* fails to arrive for work, without permission from the employer or without justified cause, on two Mondays during the course of a given month, six in a given year, or three consecutive days or alternate days in any one-month period.

The second group of just causes for termination of an employment relationship by an employer contemplates situations of a non-imputable nature, notably:

- a* a properly verified mental or physical disability of the employee that makes it impossible for him or her to perform the work;

- b* the expiry of one year, starting from the date of suspension of the contract, owing to the employee's illness or a non-employment-related accident; and
- c* *force majeure* or acts of God that provoke the definitive stoppage of the employer's activities as a necessary, immediate and direct consequence.

The third group consists of causes of an economic nature, namely:

- a* the insolvency or bankruptcy of the employer;
- b* the closing of the enterprise or definite reduction of work because of the evident unprofitability of the enterprise;
- c* the definitive suppression of the work inherent to the worker's contract; and
- d* an evident reduction in an employer's activities owing, for instance, to a serious economic crisis, partial failure to meet operating costs because of a properly established decrease in production, innovations in the industrial process or revocation or lapse of an administrative concession, cancellation or decrease in sales orders, or any other similar cause duly verified by the competent authority.

Notice of termination must always be in writing and must specify the reasons for termination. In the event of termination for economic reasons, the employer must obtain authorisation from the Ministry of Labour and prove *prima facie* the valid economic reasons for termination. If, after 60 calendar days have passed since the date when the authorisation was requested, the labour authorities have not ruled on the petition, the employer can proceed to execute the dismissals. In this instance, the employer shall nevertheless pay the dismissed employees severance, as set out in the first paragraph of this subsection.

The employment relationship may also be terminated by (1) mutual consent, provided it is expressed in writing and does not involve the waiver of acquired rights, (2) expiry of the term of the contract, provided the employment relationship has been validly stipulated for a definite period, and (3) the resignation of the employee, provided that this is in writing and has been ratified before an administrative labour authority.

Employees protected by union immunity, as described in Section XI, or maternity immunity cannot be dismissed without the prior authorisation of a labour court based on a justified cause provided for in law. Maternity immunity is granted to female employees during pregnancy and for one year from the date the employee returns from maternity leave.

## **ii Redundancies**

Collective dismissals are regulated under the Labour Code and are considered justified based on economic reasons, as set out in Section XIII.i. For an employer to be able to dismiss its workforce collectively, it requires previous authorisation from the Ministry of Labour, as it must prove that the company is facing at least one of the economic situations described above. In the event of dismissals based on economic reasons, the following rules shall be applied:

- a* dismissals shall begin with employees of the lowest seniority within the various labour categories;
- b* after application of the provision in point (a), Panamanian employees shall be given preference in determining the retention of those who are not Panamanian, unionised employees over those who are not unionised and the most efficient over those who are less efficient;

- c* pregnant employees, even if they are not given preference under the preceding provisions, shall be the last to be dismissed and only if their dismissal is absolutely necessary and after compliance with legal formalities; and
- d* after the preceding provisions have been applied, under equal circumstances, employees with union immunity shall have preference over others for retention of employment.

Even when the cause for dismissal is justified under the Labour Code, given that the dismissal is not attributable to the employee, it must be compensated with a severance payment that is equivalent to 3.4 weeks' salary for each year of service, calculated pro rata. The salary for this purpose will be the average monthly salary of the last six months of employment.

Other than notification to the Ministry of Labour, no other notifications are required, and there is no requirement to provide prior notice to the employees.

Mutual termination agreements may be used for collective dismissals; however, it is most likely that the employee will demand the payment of severance, three months' salary and a 25 per cent surcharge on the severance.

Individual redundancies are not regarded as justified under the Labour Code, but an employer may try to terminate an employment relationship by offering an employee a mutual termination agreement offering the payment of severance, unless the employee has completed fewer than two years of service, in which case the employee may be dismissed with 30 days' prior notice, or payment in lieu, and receive a severance payment.

#### **XIV TRANSFER OF BUSINESS**

The Labour Code provides the rules that must be followed upon any change in the legal or economic structure of a company, or the substitution of an employer:

- a* The change or substitution shall not affect existing employment relationships in a manner that would prejudice the employees.
- b* Without prejudice to legal obligations between an employer and an employee under the civil law, the replaced employer shall always be jointly and severally liable with the new employer for obligations existing for one year under an agreement or imposed by law that arose before the date of the substitution, counting from the date of the notice described in point (c). After the end of this period, the new employer will have sole liability for these obligations.
- c* Notice of the substitution of an employer shall be given in writing to employees, and their respective unions, no later than 15 days after the date of the substitution.
- d* Failure to give notice of substitution shall maintain the joint and several liability of the former employer and the new employer until notice is given.
- e* In no case shall the division of a company into units in which employees work, or the making of contracts, commercial arrangements or combinations with the intent of diminishing or making other persons liable for the responsibilities of the employer, affect the rights and claims of employees.
- f* When all or substantially all the assets of a company have been transferred to a third party pursuant to a judicial or other action that is later declared unlawful or unconstitutional, the transfer will not be effected and the transferee shall be the only person liable for the legal consequences arising from actions that occur, agreements that are entered into or laws that are adopted between the date on which the aforesaid assets

were transferred and the date on which they were returned to their lawful owner, except in the event that the transferor benefited from a transfer of assets that was not genuine or that was fraudulent in a manner that benefited the transferor.

- g* The beneficiary of an action that is declared unlawful or unconstitutional shall be jointly and severally liable with its shareholders and directors, if any, for the payment of liabilities that arose during the period of its management of the assets that it acquired or produced.

Moreover, an employee who is owed money for work done may demand payment for that work from the transferee of the property of the establishment, business or company, if the transfer was not genuine or was made through fraudulent acts.

In addition, if agreements for the lease of an establishment or business are not genuine or are fraudulent, the lessor shall be jointly and severally liable with the lessee for all obligations in respect of labour arising during the term of the lease, without prejudice to the application of provisions respecting the substitution of employer to the extent that they are more favourable to employees. Agreements for the lease of an establishment or business shall be deemed not to be genuine or to be fraudulent when they cause non-fulfilment of obligations in respect of compensation for labour.

## **XV OUTLOOK**

We do not foresee any changes to the Labour Code or any other labour-related regulations, other than the applicable minimum wage rates.

Minimum wage rates are revised every two years, and the current term began on 1 January 2022. During the months prior to December 2023, the government will meet with both employees' and employers' representatives to discuss the new minimum wage rates that will apply for 2024–2025.

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