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Employment 2021

Dominican Republic
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DOMINICAN REPUBLIC

Law and Practice

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1. INTRODUCTION

1.1 Main Changes in the Past Year

The Labour Code was first enacted in 1992 and over the past few years there have been discussions among representatives of employers and employees regarding the possible amendment of certain provisions, however, no agreement has yet been reached.

Due to the pandemic, the Ministry of Labour issued Resolution 023/2020 on the Regulation of Telework as a Special Work Modality, and various bills have been submitted to Congress that work to include telework as a type of employment agreement in the Labour Code.

Other bills currently pending before the National Congress refer to unemployment insurance, paid domestic work, incentives to the first job, rural work, prohibition of discrimination of work and occupation by age, equality of benefits, and an amendment to the social security system.

1.2 COVID-19 Crisis

In April 2020, the government put into place a solidarity fund to assist employees affected by the measures adopted to prevent COVID-19 (known as "FASE").

The assistance was in the form of a subsidy paid directly to employees whose employment had been suspended. This programme also benefited manufacturing companies and small and medium-sized companies that kept operating without suspending employment; the government paid directly to employees, on behalf of the employer, a proportion of the salary.

The government first announced that the programme would only be in place for the months of April and May, but as the COVID-19 crisis extended, the government was forced to extend the programme, including variations in the amount and scope as the situation evolved.

On 12 November 2020, the Ministry of Labour issued Resolution No 23/2020, amended by Resolution No 27/2020 on 11 December 2020. This Resolution lists the issues that must be included in telework agreements, and which must be entered in writing and registered with the Ministry of Labour. Among the issues to be addressed in the agreement, the following stand out:

- the description of the teleworker's tasks, as well as the place or places where the work will be performed;
- the salary;
- details of the immediate supervisor;
- work supervision system; power to verify workplace conditions; and
- tools supplied by the employer, if any.

The Resolution defines the right to "digital disconnection" in favour of employees, and the right of "reversibility", by which any of the parties may request the change of teleworking modality to face-to-face, subject to a prior notice in writing of 30 days; however, the parties can agree on a different period.

2. TERMS OF EMPLOYMENT

2.1 Status of Employee

The Labour Code makes no distinction between blue-collar and white-collar workers.

The distinction made in the law is not pertaining to employee statuses, but is rather based on the type of service provided or industry; a special set of rules apply to the employment of minors, professional training agreements, domestic workers, home-based workers, agricultural workers,

transportation workers, sales workers and travelling salesman.

2.2 Contractual Relationship

Employment contracts can be for a fixed term or an indefinite time. The latter is defined as a contract for the services provided by the employee on a permanent and uninterrupted basis (ie, it goes towards satisfying the normal, constant, and sole needs of a company).

In the fixed-term contract the parties set a date for the expiration of their labour relationship. The complete execution of the work or the expiration of the term extinguishes the contractual relationship; the contract ceases to exist without any liability. The Labour Code establishes that this type of contract can be entered into if:

- it is in accordance with the nature of service to be provided;
- its purpose is to provisionally substitute an employee who is on leave or has a temporary impairment, or
- it is agreed to be in the interests of the employee.

An employment contract is presumed to be for an indefinite period, until proven otherwise. Fixed-term contracts must be in writing, contrary to contracts for indefinite terms which can be formalised orally.

When the contract is in writing, the following terms must be included:

- the names, credentials and addresses of employer and employee;
- the work to be performed by the employee, and the salary and benefits that the employee will receive for such work;
- the place and hours of work; and
- the term of employment if it is for a definite time, or indication that it is for indefinite period.

Some terms will apply by law even if not provided in the employment contract, such as vacation leave, Christmas bonus and compensation for profit sharing. The parties are free to agree to additional terms if these are not less favourable than the rights afforded by law. When an employment contract is entered in writing, any amendment to its terms must also be in writing.

2.3 Working Hours

Overtime

An employee's daily shift cannot exceed eight hours and the working week cannot be more than 44 hours. In companies with around-the-clock operations, the work period can be extended by an additional hour, but the weekly average may not exceed 50 hours, and any hour worked in excess of 44 hours per week must be compensated as overtime. Overtime cannot exceed 80 hours every three weeks.

The Labour Code provides for some exceptions to the work shift duration requirements when employees serve as representatives of the employer; employees serve in management or supervisory positions, and employees are employed by small businesses, usually by family members.

Flexible arrangements are possible whenever the parties expressly agree on the applicable terms and conditions.

As to part-time contracts, there is no reference in the Labour Code, but a definition of part-time contract is given in the Resolutions issued by the Ministry of Labour fixing the minimum wage. Such Resolutions provide that the work week of part-time employees cannot exceed 29 hours, and part-time employees cannot work overtime.

However, authors consider that the restriction on overtime is unenforceable since the Labour Code nor any other regulation of higher hierarchy limit or prohibit overtime in part-time contracts. Hence, the consensus is that if an employee's shift is part-time, overtime shall be paid whenever the employee exceeds such limit.

Compensation

Overtime must be compensated as follows:

- each extra hour worked over the normal working period and up to 68 total hours per week, must be paid at a rate of at least 35% more than the normal value of the hour; and
- each hour that exceeds this threshold of 68 hours per week must be paid at a rate of 100% more than the normal value of the hour.

2.4 Compensation

Minimum Wage

Effective 16 July 2021, the National Salaries Committee set new minimum wages for companies in the private sector (leaving out construction, tourism, and free trade zones companies), and agreed on a new classification of companies, as follows.

- Large companies (more than 150 employees and gross annual sales exceeding DOP202 million): DOP21,000.
- Medium companies (51 to 150 employees and gross annual sales between DOP54 million to DOP202 million): DOP19,250.
- Small companies (11 to 50 employees and gross annual sales between DOP8 million to DOP54 million): DOP12,900.
- Micro-companies (up to ten employees and gross annual sales not exceeding DOP8 million): DOP11,900.

The National Salaries Committee is a department within the Ministry of Labour that sets from time to time the minimum wage. The Dominican Republic does not have a mechanism for indexation of salaries; adjustments are made in response to several circumstances, including economic issues, social unrest and political considerations.

Thirteenth Salary

The employer is bound to pay to the employee a Christmas salary every December consisting of one twelfth of the ordinary salary earned by the employee in the calendar year. The Christmas salary is tax exempt.

Profit Sharing

It is mandatory for all employers to a bonus to all their employees contracted for indefinite term. The employer must distribute among these employees the amount equivalent to 10% of the annual net profits, before deductions and bonuses of the members of the board, directors, administrators, or managers.

The bonus per employee may not exceed the amount of 45 days of ordinary salary for employees with less than three years of work, and 60 days for employees with more than three years working for the same employer. Payment of the profit share must be made within 90 to 120 days following the closing of the company's fiscal year.

When the employee does not work during the entire fiscal year, the individual share of the profits will be proportional to the salary for the time worked.

The following employers are exempt from payment of the profit share:

- agricultural, agro-industrial, industrial, forestry, and mining companies during their first three years of operations;
- agricultural enterprises with a social capital no greater than DOP1 million; and

- free trade zone companies.

2.5 Other Terms of Employment

Vacation Right

The employee has the right to enjoy a paid vacation after completing the first year of labour, and this right is restored each time the employee reaches another year rendering uninterrupted services for the same employer.

Payment of the vacation salary depends on the contract's duration, as follows:

- after one year and up to five years of employment, payment shall be equal to 14 days of ordinary salary; and
- after five years, payment shall be equal to 18 days of regular salary.

This scale only applies to the calculation of the vacation salary. The days off work that employees enjoy are 14, regardless of the employee's tenure. The parties may agree on longer periods of vacation. The payment of this salary must be effective the day before the vacations begins, along with the salary that the employee has earned up to that date.

Employees who have acquired such right, but whose contract is terminated prior to the enjoyment of their vacations, shall receive a proportion according to the scale established in the Labour Code, which ranges from six to 12 days of ordinary salary.

Paid Leaves

The employer must grant employees the following paid leaves of absences:

- five days upon the employees marriage;
- three days upon death of the employee's parents, children, grandparents, husband/wife or companion; and
- two days upon birth of the wife's or companion's child.

The employer must grant pregnant employees a paid maternity leave of seven weeks prior to the date of birth, and seven weeks following the date of birth. When the pregnant employee does not use all the prenatal leave period, the unused time is added to the post-natal leave.

3. RESTRICTIVE COVENANTS

3.1 Non-competition Clauses

The Labour Code does not contain a provision referring to the right of an employer to restrict the future activities of employees. However, a non-compete clause included in the employment contract can be enforceable, provided it is reasonable and expressly indicates the covered business area and timeframe.

3.2 Non-solicitation Clauses – Enforceability/Standards

The Labour Code does not contain a provision referring to the right of an employer to limit an employee's solicitation of employees and customers during the term of the employee's employment and for a specific time after employment terminates.

The Labour Code imposes upon the employee the obligation to safeguard trade secrets and confidential information during and after employment and allows the employer to terminate with cause when the employee reveals secrets or discloses confidential information to the company's detriment.

A non-solicitation clause included in the employment contract can be enforceable if it is reasonable and does not affect the employees' ability to freely engage in remunerative employment.

4. DATA PRIVACY LAW

4.1 General Overview

The creation of databases of personal data in the Dominican Republic is subject to compliance with the provisions of the Constitution and the Data Protection Law, regarding the conditions for the collection of data and the rights of the data subjects on the information kept on said databases, as well as the handling of the data.

However, Article 41 of the Data Protection Law No 172-13 provides that "individuals that create files, records or databases of personal data that are not intended for their exclusive personal use should comply with the requirements established by this law". Hence, if the creation of the database is for the exclusive use of the employer, there is no need to comply with registration requirements established by the law.

Article 27(4) of Data Protection Law No 172-13 includes as an exception to the requirement of consent of the data subject to access, process and transfer personal data, the information "arising from a business, employment or contractual, scientific, or professional relationship with the individual, and necessary for the development or performance of the relationship".

The Supreme Court of Justice acknowledged that employers are entitled to search and revise all emails issued by members of its personnel subject to the fact that the email is sent from a company owned email account (institutional email account) and kept in a company owned or controlled server. The Supreme Court of Justice established that the institutional email account is a tool provided by the employer to the employee for the performance of its labour and, therefore, property of the employer, which entitles the employer to have access to all emails issued regardless of the addressee. The Constitutional Court reaffirmed the criteria set by the Supreme Court of Justice in this judgment, through the decision issued on 8 August 2009.

5. FOREIGN WORKERS

5.1 Limitations on the Use of Foreign Workers

The Labour Code establishes that at least 80% of the workers must be Dominican citizens, and 80% of the payroll must be salaries paid to Dominican citizens. Foreign employees at a management level and technical employees are excluded from this provision.

5.2 Registration Requirements

Employment contracts of foreign workers have to be formalised in writing and registered with the Ministry of Labour. The Ministry must verify that the employee holds a valid work visa or is a legal resident allowed to work in the Dominican Republic. If the employer retains foreign employees who are not authorised to work in the Dominican Republic, the employer can be subject to a fine and the employee can be deported to his or her country of origin.

The foreign employee will be registered in the Social Security Treasury, and the employer must pay all social security contributions for the employee. If the employee keeps contributing to the social security of their home country, then the employer does not need to pay contributions to the local entities regarding the social security, according to Article 5, paragraph of Law No 87-01 that creates the Dominican Social Security System.

6. COLLECTIVE RELATIONS

6.1 Status/Role of Unions

Freedom to join a union is among the basic rights of an employee. Employers are prohibited from using influence to restrict the right of employees to join a union or firing them for belonging to or remaining in one.

The union's activities are carried out by the general assembly, by the board of directors, by its officials, and by permanent or temporary committees created by the union.

6.2 Employee Representative Bodies

Employee Unions

Unions are the representative bodies of employees.

The approval of the employer is not required to form an employees' union. The employees have to comply with the requirements set by law regarding formal documents, capacity and the number of members organising the union, and register before the Ministry of Labour.

If the incorporation documents are not in compliance with the law, the Ministry of Labour can reject the registration or return the files for their correction. Once the union is registered with the Ministry of Labour, it has legal standing as a juridical person.

Members

The minimum number of members required by law to form a workers' union is 20. Managers and directors, and individuals who perform functions such as inspection, security, monitoring or oversight, when such functions are performed at a general level or relate to work rendered directly to the employer ("trusted employees") cannot be members of a workers' union.

Such limitation must be construed taking into account Articles 6 and 110 of the Labour Code, which provide:

- managers, directors, employees who perform functions of monitoring or directing, are considered representatives of the employer in their relationship with the employees; and
- collective agreements do not apply to employees who perform functions of oversight or inspection of work of others.

Individuals who Perform Functions

To qualify as an individual who perform functions such as inspection, security, monitoring or oversight, when such functions are performed at a general level or relate to work rendered directly to the employer, it suffices that the employee has the attribution of representative of the employer before other employees and third parties, and can substitute, in whole or in part, the employer; these employees, because of their functions, truly represent the interests of the employer.

The Role of Unions

The role of unions are:

- the study of the conditions in which work is carried out in the company;
- reaching collective agreements on working conditions;
- fair and peaceful solution to the economic conflicts that arise out of the enforcement of employment agreements;
- the improvement of working conditions, productive efficiency, and the material, social, and moral conditions of its affiliates; and
- the study and preparation of statements and recommendations toward legislative reforms.

6.3 Collective Bargaining Agreements

To enter into a collective agreement, the union must enrol at least 50% + 1 of the employees (Article 109 of the Labour Code). Wages, length

of the workday, rest periods and vacations, and any other working conditions can be regulated via collective agreements.

The conditions agreed upon in the collective agreement become part of the individual employment contracts of the company, even when they refer to employees who are not members of the union making the agreement.

7. TERMINATION OF EMPLOYMENT

7.1 Grounds for Termination

Termination

Employment contracts may terminate by the unilateral will of the employer or employee, without cause (*desahucio*), or through a dismissal with cause exercised by the employer (*despido*), or through resignation with cause (*dimisión*) exercised by the employee. Employment contracts may also termination by mutual will of the parties.

Motivation is not required for a termination without cause. Motivation is required for a dismissal and resignation with cause, as these are only lawful when the employee or employer commits one or more of the offenses expressly foreseen in the Labour Code.

Probationary Periods

During the first three months of employment, the employee is in a probationary period; therefore, the termination of the contract during this period shall not be subject to any payment of severance or indemnity.

For a mass lay-off, the employer has the following options:

- termination without cause, which forces the employer to give notice and pay severance; or
- termination agreement, which must be formalised before a notary public or before the Labour Department of the Ministry of Labour.

Bankruptcy

In cases of bankruptcy, a company's operation terminating altogether, a lack of resources, unprofitability or another similar cause, the company must obtain an approval from the Ministry of Labour to proceed with the lay-off of employees. In this case, the reduction of personnel must be made in the following order:

- unmarried foreign employees;
- married foreign employees;
- foreign employees married to Dominicans;
- foreign employees with Dominican children;
- unmarried Dominican employees; and
- married Dominican employees.

7.2 Notice Periods/Severance

Notice

The employer that terminates the employee without cause (*desahucio*) must give the employee advance notice of such termination. The length of time of such notice depends on the employee's tenure on the job:

- after continuous work of no less than three months and no more than six months, the employer must give a notice of 7 days;
- after continuous work of no less than six months and no more than one year, the employer must give notice of 14 days; and
- after a year of continuous work the employer give notice of 28 days.

In lieu of giving such notice, the employer may decide to pay the employee the number of salary days corresponding to the notice period. Also, according to Article 79 of the Labour Code,

the employer that fails to give notice or gives an insufficient notice must pay the employee compensation according to the number of days indicated above.

Severance

In addition to payment in lieu of notice (when applicable), upon termination without cause an employer is required to pay severance (*cesantía*) to the terminated employee. Severance is also calculated based on the tenure of the employee on the job, according to the following scale:

- after continuous work for no less than three months and no more than six months, the employer must pay 6 days of ordinary salary;
- after continuous work for no less than six months and no more than one year, the employer must pay 13 days of ordinary salary;
- after continuous work for no less than one years and no more than five years, the employer must pay 21 days of ordinary salary for each year of service;
- after continuous work for no less than five years, the employer must pay 23 days of ordinary salary for each year of service; and
- any fraction of a year, longer than three months, must be paid according to this scale.

According to Article 85 of the Labour Code, the salary used for the calculation of severance and payment in lieu of notice must be the average of the employee's ordinary income for the last year. The last year or fraction of a year refers to the one that expires on the same date of termination of employment.

Payment in Lieu

Payment in lieu of notice and payment of severance must be made within ten calendar days from the date of termination. If the employer fails to do so, the employer must pay to the employee a compensation equal to one day's salary for each day of delay until final payment.

According to Article 86 of the Labour Code, payment in lieu of notice and severance are not subject of any withholding or tax, and cannot be attached, set-off nor transferred, except for credits granted or obligations arisen from special laws. Based upon this provision and the fact that such payments are not considered salary, debts owed to the employer or debts for loans or credits granted to the employee with the guarantee of the employer, can be withheld.

Withholding Funds and External Advice

To be able to withhold funds, the employer needs to have evidence of the credit granted to the employee and evidence of the authorisation from the employee to deduct and balance or debts from the payments due upon termination.

External advice or authorisation is not required unless the employee rejects payment of severance or fails to appear to collect payment. In such cases, it is advisable that employer engages an attorney.

7.3 Dismissal For (Serious) Cause (Summary Dismissal)

Justifying Termination

Termination with cause is governed by Articles 87 to 95 of the Labour Code. Based on article 87, the employer has the right to terminate the employment contract when the employee commits a serious or inexcusable fault.

A serious or inexcusable fault is when the act or negligence of the employee makes it impossible for the employment to remain in effect (violation of the duty of loyalty, insubordination, violation of the duty of confidentiality or trade secrets).

The offences that can justify a termination with cause are established in Article 88.

- The employee inducing the employer to commit an error by claiming to have essential conditions or knowledge that they do not possess or by giving personal references or certificates later proven to be false.
- The employee performs the job in a manner that shows their incapacity and inefficiency (cannot be claimed after the employee has provided services for three months).
- The employee engages, during their work, in fraud or dishonesty, acts violently, mistreats and/or utters insults against the employer or its related parties.
- The employee commits, against any of their co-workers, any of the acts mentioned in numeral 3, which result in disturbance of the work environment.
- The employee commits, outside the job and against the employer, the related parties, or the executives of the company, any of the acts referred to in numeral 3.
- The employee intentionally causes material damage to buildings, works, machinery, tools, raw materials, products, and any other objects related to the job, during the performance of the job or by reason of the same.
- The employee unintentionally, through negligence or lack of judgment, causes serious damage to buildings, works, machinery, tools, raw materials, products, and any other objects related to the job, during the performance of the job or by reason of the same.
- The employee commits dishonest acts in the workshop, establishment, or workplace.
- The employee reveals industrial secrets or discloses confidential information to the company's detriment.
- The employee endangers the workshop, office or other promises of the company or the people in it, through inexcusable lack of judgment or carelessness.
- The employee fails to attend work for two consecutive days or two days in the same month, without authorisation from the employer or a representative, or without presenting a just cause for their absence.
- The employee in charge of a task or machinery, whose absence or work interruption necessarily implies a disruption for the company's operations, fails to attend without providing a just cause for his/her absence.
- The employee leaves work during working hours without the employer's or its representative's permission and without having provided to the employer or its representative a just cause for leaving work.
- The employee disobeys the employer or its representatives, during performance of the contracted work.
- The employee refuses to adopt preventive measures or follow the procedures required by law, competent authorities or the employers to prevent accidents or injury.
- The employee violates any of the prohibitions indicated in numerals 1, 2, 5, and 6 of Article 45 of the Labour Code.
- The employee violates any of the prohibitions established in numerals 3 and 4 of Article 45, after the Labour Department or the local authority exercising its function, has issued him a warning upon the employer's request.
- The employee has been sentenced to imprisonment by a final court decision.
- The employee demonstrates lack of dedication to the work contracted or commits any other serious violation of the obligations required by the contract.

Prohibitions that Can Lead to Dismissal

Article 45 of the Labour Code establishes a series of prohibitions for employees that could lead to a dismissal with cause in the manner indicated above.

- Coming to work or working in a drunken state or in any other similar condition.

- Carrying weapons of any kind during working hours, save those exceptions for certain workers established by law.
- Taking collections in the workplace during working hours.
- Using the equipment and tools given by the employer for a job different from the one for which they were intended or using the equipment and tools of the employer without authorization.
- Taking from the factory, workshop or establishment work equipment and finished or raw materials, without the permission of the employer.
- Conducting any kind of religious or political advertising on the job.

If the offense committed by the employee does not fall within one of the causes provided by the Labour Code, the termination will be declared without cause and the employee will be entitled to severance and the indemnity established in article 95(3) of the Labour Code.

The employer does not have to carry out an investigation before termination with cause. As established by the Supreme Court of Justice, "for a dismissal to be declared justified, it is not necessary that the company previously conducts an investigation of the offenses committed by the employee that constitute the faults invoked by the employer to terminate the contract; regardless of whether it is carried out or not, the just cause of the termination will depend on the evidence that is submitted to the court and the evaluation of the same" (SCJ, Judgment dated 26 May 1999, B.J. 1062, p. 919).

Communicating and Effecting Termination

The employer has the obligation to communicate in writing to the employee its decision to unilaterally terminate the employment contract within 15 days; otherwise, the termination will be declared as time barred. The Supreme Court of Justice has consistently held that such term starts to accrue from the date on which the event that caused the breach of the contract took place, or from the date the employer was informed or became aware of such event taking place.

The termination is effective as of the moment the employee has knowledge of the employer's decision. As of that moment, the employer has 48 hours to inform in writing to the Labour Department of the Ministry of Labour or the local labour authority of the termination of the employment with express indication of the fault(s) committed by the employee that led to their dismissal (the employer is not required to indicate the facts or events that led to termination; for the purposes of this provision, it suffices that the employer indicates the cause(s) from the list set forth in Article 88).

This obligation to communicate the termination to the local labour authority is established in article 91 of the Labour Code, and according to Article 93, failure to comply with this obligation results in the termination being declared as unjustified or "without cause".

The case law interprets Article 93 as "jure de jure" presumption, meaning that it cannot be overcome by presenting evidence that the employee committed the faults indicated by the employer. Instead, such presumption is sustained until the employer demonstrates the existence of the communication required by Article 91 (SCJ, Judgment dated 4 November 1998, No 11, B.J. 1056, p. 368; Judgment dated 21 October 1998, B.J. 1055, p. 555; Judgment dated 16 January 1981, B.J. 842, p. 74; Judgment dated 5 February 1982, B.J. 555, p. 121).

7.4 Termination Agreements

Termination agreements are permissible. According to Article 68 of the Labour Code, "(t)

he employment agreement terminates without responsibility for any of the parties by their mutual consent (…)". The parties are free to agree on the amounts to be paid upon termination.

For a termination to be valid, it must be formalised before a notary public or before the Labour Department of the Ministry of Labour.

7.5 Protected Employees

There are specific protections against termination of pregnant employees and union representatives.

According to Article 332 of the Labour Code, dismissal with cause of a pregnant employee or within six months after the date of birth must be authorised by the Department of Labour or the local authority. Failure to obtain such authorisation results in payment of an indemnity equivalent to five months of ordinary salary.

According to Article 391 of the Labour Code, dismissal with cause of any employee protected by union enclave privilege must be previously submitted to the Labour Court of Appeals, who will assess whether the cause for termination responds to a fault committed by the employee or to their participation as union member. When the employer does not observe this formality, the dismissal with cause is void and does not terminate the contract.

Employees protected by the union enclave are:

- employees who are members of a union in formation, up to 20 in number;
- employees who are members of the governing board of a union up five in number if the company does not employ more than 200 workers, up to eight in number if the company employs more than two 200 but less than 400, and up to ten in number if the company employs more than 400 workers; and
- representatives of the employees in the negotiation of a collective agreement, up to three in number.

8. EMPLOYMENT DISPUTES

8.1 Wrongful Dismissal Claims

The employee can contest the termination via a labour lawsuit against the employer. According to Article 702 of the Labour Code, the statute of limitations for any legal action by the employee against the employer for an alleged unjustified dismissal is two months, which starts to accrue as of the date the employee is informed about the termination.

Once the termination becomes effective, a legal presumption arises that it is unjustified. However, this presumption can be overcome by submitting evidence to contrary. The burden of proof of the just cause for termination lies on the employer. The employer can meet its burden of proof by providing documentary evidence and witness testimony.

In case the terminated employee brings a legal action for unjustified dismissal, the employer must prove it notified timely the termination to the Ministry of Labour and must prove the existence of one of the causes for dismissal. The causes to be demonstrated in court are the ones expressly indicated in the communication delivered to the labour authorities (SCJ, Judgment dated 16 October 1970, B.J. 719, p. 2235). These causes may not be amended or modified.

If the judge deems the evidence sufficient to prove the cause for termination, no liability results for the employer (except for the acquired rights, such as unused vacations, Christmas bonus and profit share, which are due to the

employee regardless of the modality of termination of the employment contract).

When the employer fails to demonstrate the just cause for dismissal, the employer is bound to pay notice and severance (calculated in the manner described above for the cases of termination without cause), and a compensation of up to six months of ordinary salary as indemnity for unlawful termination.

8.2 Anti-discrimination Issues

Principle VII of the Labour Code of the Dominican Republic forbids any form of discrimination, exclusion or preference based on motives of sex, age, race, colour, national origin, social origin, political opinion, union participation or religious belief. Distinctions based on the qualifications required for a particular job are excluded from this provision.

Also, the Dominican Republic is a party to the Convention 111 of the International Labour Organization, about employment and occupation discrimination, which prohibits any distinction, exclusion or preference made based on race, colour, gender, religion, political opinion, national extraction, or social origin. And the Dominican Constitution provides for equality and prohibit any form of discrimination.

Particularly regarding employment, the Constitution establishes that all kinds of discrimination in access to employment or during employment are prohibited, guarantees payment of equal wages for work of equal value, in identical conditions of ability, efficiency, and seniority, without discrimination by gender or any other motive.

Any act of discrimination from the employer can be cause for resignation by the employee, who must file a claim and has the burden of proof of such act of discrimination. The employee is only exempted from the burden of proof of the circumstances that are established in the documents and registries that the employer must hold, such as forms filed with the Ministry of Labour, Book of Salaries and Wages, etc.

9. DISPUTE RESOLUTION

9.1 Judicial Procedures

There is a specialised jurisdiction for labour matters: first instance labour court in each judicial district (in the districts where there is no specialised court, the disputes are heard by the civil, commercial and labour chamber of the first instance court), and labour court of appeals for each judicial department – which is comprised of various judicial districts (where there is no specialised court, the appeals are heard by the civil, commercial and labour chamber of the court of appeals).

Labour courts have jurisdiction to solve disputes that arise between employers and employees, or solely between employees, in connection or related to the application of the labour laws, enforcement of contractual provisions or provisions of collective bargaining agreements.

Labour courts also have jurisdiction to solve disputes between unions, between employees, between employees affiliated to the same union, or between employees and members of the union.

9.2 Alternative Dispute Resolution

Arbitration is possible when the parties agree to submit an existing dispute to such resolution mechanism.

According to the opinion of the majority of judges from the Supreme Court of Justice, pre-dispute arbitration agreements are not enforceable, and any reference to arbitration made in Article 419 of the Labour Code is not in the context

of Law 489-08 dated 19 December 2008 which governs commercial arbitration in the Dominican Republic (SCJ, Judgment 22/2020 dated 15 July 2020; Judgment dated 23 August 2017; Judgment dated 20 December 2019).

The Supreme Court of Justice further states that employment disputes are out of the scope of Law 489-08 since it is a matter of public policy, hence non-arbitrable.

9.3 Awarding Attorney's Fees

A prevailing party in a labour claim can be awarded attorney's fees. According to Article 504 of the Labour Code, legal costs – which include attorney's fees in said context – are governed by the general rules of law; Article 130 of the Code of Civil Procedure provides that the party against whom the decision is rendered shall bear the costs of the proceedings.

Jiménez Peña has one of the leading labour and employment practices in the Dominican Republic, excelling in both labour advisory and litigation. The 51-strong team regularly assists local and multinational companies on hiring and terminating local and foreign employees, creating and implementing internal labour policies and regulations, complying with labour and social security laws, as well as managing relationships with labour unions. The firm's client list demonstrates the broad industry experience the firm has representing companies from sectors such as tourism, hospitality, manufacturing, free zones, Major League Baseball, civil aviation, mining, and construction.

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