

I. INTRODUCTION

This report's objectives are to illustrate, in a general way, the employment law system in Argentina, analyzing the main aspects of hiring, from the employer's and the employee's point of view. Also we analyze the laws related to Immigration with working purposes.

The relationship between employer and employee in Argentina is governed by (i) Labour Contract Law N° 20.744, as subsequently amended, (ii) other laws and professional statutes, (iii) collective bargaining agreements (iv) the individual terms of labour contracts and (v) customary practices.

The Labour Contract Law governs the main aspects of the relationship between employer and employee such as salaries, working hours per day, vacations and other leaves of absence, trial period, hiring and termination of labour contracts.

To guarantee the employee's rights, the law provides certain conditions that cannot be negotiated. Therefore parties can never agree worse conditions for the employee than those provided in the Labour Contract Law, in the collective bargaining agreements or in the professional statutes. Should the parties agree worse conditions than those provided by the regulations, those agreements are null and replaced by the mandatory rules. In case of any doubt, the interpretation will be made in favour of the employee (*in dubio pro operario*).

Although membership is not compulsory, most employees belong to a trade union, depending on the kind of industry or service for which they work. Collective bargaining agreements are applied to all workers, whether they are affiliated or not. All companies have to be registered as employers on the tax authority (AFIP) records.

In case of dispute, the employers and employees are obliged to try to settle the matter through mediation proceedings before a dispute resolution centre, which is under the control of the Ministry of Labour. The judicial process only starts if the parties do not reach an agreement.

2. THE DIFFERENT TYPES OF EMPLOYMENT CONTRACTS AND THEIR TERMINATION

The employment agreement does not necessarily need to be a signed written agreement. It may also be a verbal agreement. It should be stressed that an agreement can be implicit, as it is sufficient when services are provided on a continuous basis.

All employment relationships are presumed to be for an indefinite period of time, unless the termination time has been set explicitly for restrictive and objective reasons justifying the determined period. In case of doubt, the contract will be considered to be for an indefinite period of time.

2.1 SALARIES

Salaries may be paid by time (hourly, daily, monthly) or by work performance (piecework, commission basis, gratifications, bonus). There is a legal minimum wage per month (at the time of this report ARS 1,500, approximately USD 375). In addition, the Labour Contract Law establishes an annual bonus (“*aguinaldo*”) equivalent to one salary, which is paid in two installments, the first on 30th June and the second on 31st of December of each year.

The standard working week is up to 48 hours, with an average of 8 hours per day. If the work is at night the average is 7 hours per day. When the work is to be performed in unsanitary places (for instance foul air, permanent toxic fumes or dust) working hours shall not exceed 6 hours per day or 36 hours per week.

The Employees earn overtime pay for work performed in excess of the standard working week. These rates are increased by 50% considering the base rate on normal work days and by 100% considering the base rate on Saturday afternoons, Sundays and official holidays.

2.2 VACATIONS AND OTHER LEAVES OF ABSENCE

Employees are entitled to annual paid holidays, which vary depending on the length of service and providing they have worked at least half of the annual working days. If not, the employees are entitled to take one day of holiday per twenty working days. the employee has served up to five years, he/she is entitled to 14 days of licence; up to 10 years of service 21 days of licence are due; up to 20 years of service 28 days of license are due and for more than 20 years of service he/she is entitled to 35 days of license.

Employees also are entitled to short leaves of absence in the event of marriage (10 days), birth (2 days), death of a close relative (1 or 3 days) or high school/ university examinations (10 days per year).

Female employees enjoy a special leave of absence for maternity of 90 days (45 days before and 45 days after childbirth).

In case of accident or illness, employees are entitled to their salaries for a period of 3 to 12 months, depending on the length of service and the family burdens. If the obstacle to work continues at the end of this period, the employer has to keep the job for another year before considering the relationship to be at an end.

2.3 TRIAL PERIOD

The rule is that employment contracts are for an indefinite period of time, but as said above, exceptionally they can be for a fixed term.

In the case of indefinite period contracts the law provides a three months trial period. The trial period allows either party to terminate the contract at any time without severance payment. In this case the terminating party should give a prior notice of at least fifteen days, if not the term of the contract is considered to be indefinite.

The employee shall be properly registered even in the trial period. An employer cannot hire the same employee more than once using the trial period and if this happens it will be considered that the employer has waived the trial period.

2.4 TERMINATION OF LABOUR CONTRACTS

All employees can resign at any time giving a fifteen days' prior notice.

If the employer decides to dismiss an employee, the employer has to give him a prior notice of fifteen days (during trial period), one month (if the period of service is less than five years) or two months (if the period of service is more than five years).

This notice can be replaced with a payment equivalent to the salary of the period of prior notice omitted, plus the annual bonus (*pro rata*).

The employer must pay to the employee one month's salary for each year of employment or period worked in excess of three months. In any event, the base for the calculation shall be the best salary of the last annual period.

If an employee is dismissed due to wilful misconduct, no severance payment or prior notice is needed. In this case the cause of the termination shall be communicated to the employee in writing. In the eventual lawsuit filed by the employee, the employer is not allowed to change the grounds for dismissal contained in the communication abovementioned.

If a pregnant woman is dismissed, the employer has to pay all severance payments mentioned, plus an annual salary (including annual bonus).

3. SOCIAL CONTRIBUTIONS AND THE DIFFERENT KINDS OF BENEFITS IN ARGENTINA

3.1 PRESENTATION OF THE ARGENTINE SOCIAL SECURITY SYSTEM

In 1995, Argentina established compulsory private employees insurance to insure against the risk of illness at work, including accidents which take place on the way to work ("*in itinere*"). In accordance with this law, the insurer must provide medical cover, pharmaceutical attention, prosthesis, rehabilitation, funeral service benefits and also monetary compensations. In some cases the employer himself may act as an insurer.

The insurance system is financed by employers through monthly payments.

In response to the limitations of liability provided in the law, court decisions have upheld that such limitations of liability are unconstitutional in certain cases. In this way, employers have to pay the judgment amount not covered by the insurer or underwrite another insurance to cover such loss.

The Argentinean system provides a social security frame, mainly financed by the employees' and employers' mandatory contributions (approximately 40% to 44% of the employee's salary, depending on the size of the company).

The breakdown of such percentages is as follows:

Employees: the employer must withhold a maximum of 17% of the employee's salary as social security charges. These charges are called *Aportes*.

Employers:

- companies with an annual invoicing above ARS 48.000.000 must pay the equivalent of 27% of the employee's salary. These charges are called *Contribuciones*.

- the rest of the companies must deposit the equivalent of 23% of the employee's salary.

In some cases the employers have to withhold a maximum of 35% as wealth tax.

Regarding collective bargaining agreements, union dues of 1% to 2.5% may be taken from employee's salaries

3.2 OLD-AGE PENSION

Since the nationalisation of the private retirement companies, there is only a public retirement plan. To obtain an old age pension men need to be 65 years old and women 60. In both cases a 30 year contribution to the retirement system is needed.

4. FOREIGNERS WORKING IN ARGENTINA

Argentina has neither restrictions nor quotas for the employment of foreigners, as long as they fulfil immigration regulations (such as working visa), that is, they need to have valid residence permission.

There are two categories based on which a labour visa may be granted:

(a) permanent residence by virtue of a contract entered into by the foreign employee with an Argentine company or by virtue of the transfer of a foreign company's employee to a related Argentine company. In both cases the labour visa is granted indefinitely;

(b) no permanent residence. The labour visa is granted for a limited period of time and may be granted for a period of one year.

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