

1. INTRODUCTION

When employing others in Costa Rica you must abide by the labour regulations of Costa Rica to avoid problems with employees and with the Costa Rican Labour Department.

All employer-employee relations are governed by the Labour Code (*Código de Trabajo*).

2. THE WORK CONTRACT

The Labour Code presumes an employer-employee relationship exists if there is an exchange of services for money and the employer exerts directions and control over the work of the employee. The law recognizes both written and oral labour contracts.

2.1 EMPLOYER REGULATIONS AND POLICY

The labour Code requires that every employer draft and implement written employment policies and regulations that inform the employees of their rights and obligations.

2.2 WAGES, HOURS AND VACATIONS

Minimum Wage

The parties are free to negotiate the amount of wages paid so long as it does not fall below the established minimum wage. The wages may be paid by the hour, day, biweekly or monthly as agreed between the parties.

Work Week

Pursuant to the Labour Code the normal ordinary work week is forty-eight (48) hours per week maximum. The work period for an ordinary day shift is from 5:00 A.M. to 7:00 P.M. An employee who works a regular day shift (*jornada diurna*) may not work more than ten (10) hours per day, or eight (8) hours per day if the type of work is dangerous or hazardous. If the employees are at the executive and managerial level, the limitations are a maximum of twelve (12) hours of work per day.

The Labour Code makes further distinctions between day and night shifts. A night shift (*jornada nocturna*) position is work that is carried out between 7:00 P.M. and 5:00 A.M. The night shift by law may not exceed six (6) hours per day and thirty six (36) hours per week. The Labour Code also provides for a mixed work shift, which can be seven (7) hours per day and forty-two (42) hours per week maximum. The mixed shift is made up of work carried out both during the day and extending into the night shift.

When this occurs the hours worked in excess of the legally established maximum are considered extra (*jornada extraordinaria*) and will be compensated accordingly. However, the ordinary and the extraordinary work periods together may not exceed twelve (12) hours per day.

An employee who is required to work on an official public holiday must be paid double wages.

Vacations

Workers are entitled to two weeks paid vacation for the fifty (50) weeks of continuous employment with the same employer. The vacation pay is calculated by taking the wages earned during the last week, which is worked prior to the vacation. If the employee is terminated prior accumulating fifty (50) weeks worth of employment they are entitled to one (1) vacation day for each month of employment.

Christmas Bonus

By law, every worker who has worked for an employer for at least one year is entitled to an additional month's wages as a Christmas bonus, which must be paid regardless of job performance.

2.3 TERMINATION OF EMPLOYMENT

The major surprise for foreigners in Costa Rica is the difficulty involved in firing a worker. The Labour Code has strong protection of the worker's right to job security and employees cannot be fired without cause. As such, under certain circumstances, terminating the employment of an employee triggers legal obligations, which require payment to the employee. This depends on whether the employment is terminated for cause or not as set forth in the Labour Code.

Termination for Cause

Article 81 of the Labour Code itemizes the grounds, which justify an employer's reasons for terminating an employee. If an employee's dismissal is justified by the reasons as set forth in the Labour Code, the employer will only be liable for payment of wages and unused vacation time and will not incur further financial obligations to the employee.

Terminations without Cause

If the termination of an employee is not for cause as set out above, the employer might be financially liable to the employee.

Severance Pay (*Cesantia*)

If an employee's employment is terminated without cause by the employer or if the employee resigns for cause, they are entitled to severance pay. In Costa Rica the severance payment works as a built-in unemployment compensation system since the burden falls on the employer to subsidize the employee while they search for other employment. The Labour Code provides that severance pay shall be based on the length of time, which the employee has worked with the employer.

The severance payment is based upon the average wages earned by the employee in the six months preceding the termination or fraction thereof if they have not worked for six months prior to the termination.

Accumulated Vacation Pay

When an employee's employment is terminated, any unused vacation time must be paid. The vacation pay is determined by multiplying the employee's daily (gross) wage by the unused vacation days.

Pregnant Employees

The Labour Code expressly protects employees that are pregnant and/or in the nursing phase (breastfeeding). Article 94 of the Labour Code states that an employee that is pregnant or in the nursing phase may not be terminated without cause. To terminate these employees' employment even for cause requires authorisation from the Ministry of Labour.

In these special cases the employer is liable to the pregnant employee for one (1) months wages prior to the birth of the child and for three (3) months wages while she is nursing the child.

2.4 INDEPENDENT CONTRACTORS

Simply labeling an agreement as an "Independent Contractor Agreement" is not enough to refute the presumption of the Labour Code that an employer-employee relationship exists. In addition, any doubts in this regard will be resolved in the light most favourable to the employee. In ruling on these issues the Court will generally look at the reality of the entire relationship between the parties regardless of what the contract stated. The determining factor is the amount of direction and control that was exerted over the worker.

3. SOCIAL CONTRIBUTIONS AND THE DIFFERENT KINDS OF BENEFITS IN COSTA RICA

3.1 THE EMPLOYEE CAPITALIZATION FUND

The Worker Protection Law created the Employee Capitalization Fund, which is funded by the employer and is equal to 3% of the gross wages of the employee.

3.2 INJURIES ON THE JOB/WORKERS' COMPENSATION INSURANCE

The Labour Code establishes guidelines to provide for workers' occupational health and safety.

Every employer must carry workers compensation insurance to insure their workers against work related accidents. If a worker is injured and the employer did not procure insurance as required, the employer will be personally liable for all the expenses incurred by the worker as a result of the injury.

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